

104TH CONGRESS  
2D SESSION

# S. 1821

To amend the Internal Revenue Code of 1986 to provide for retirement savings and security.

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## IN THE SENATE OF THE UNITED STATES

MAY 23, 1996

Mr. DASCHLE (by request) (for himself, Mr. BRYAN, Mr. DODD, Mr. KENNEDY, Mr. LEAHY, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. ROCKEFELLER, and Mr. SIMON) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for retirement savings and security.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—SHORT TITLE; TABLE**  
4 **OF CONTENTS**

5 **SEC. 100. SHORT TITLE; TABLE OF CONTENTS.**

6 (a) SHORT TITLE.—This Act may be cited as the  
7 “Retirement Savings and Security Act”.

8 (b) TABLE OF CONTENTS.—

TITLE I—SHORT TITLE; TABLE OF CONTENTS

Sec. 100. Short title; table of contents.

## TITLE II—REVENUE PROVISIONS

Sec. 1100. Amendment of 1986 Code.

### Subtitle A—Expanded Pension Coverage and Simplification

#### CHAPTER 1—THE NEST AND OTHER COVERAGE EXPANSION

- Sec. 1101. Establishment of national employee savings trusts for employees of small employers.
- Sec. 1102. Tax-exempt organizations eligible under section 401(k).
- Sec. 1103. Nondiscrimination rules for qualified cash or deferred arrangements and matching contributions.
- Sec. 1104. Repeal of family aggregation.
- Sec. 1105. Definition of highly compensated employees.
- Sec. 1106. Repeal of limitation in case of defined benefit plan and defined contribution plan for same employee.
- Sec. 1107. Contributions on behalf of disabled employees.
- Sec. 1108. Plans covering self-employed individuals.
- Sec. 1109. Trust requirement for deferred compensation plans of State and local governments.

#### CHAPTER 2—SIMPLIFICATION AND COST SAVINGS

- Sec. 1201. Treatment of governmental and multiemployer plans under section 415 and treatment of excess benefit plans.
- Sec. 1202. Definition of compensation for section 415 purposes.
- Sec. 1203. Assumptions for adjusting certain benefits of defined benefit plans for early retirees.
- Sec. 1204. Treatment of deferred compensation plans of State and local governments and tax-exempt organizations.
- Sec. 1205. No required distributions for active employees.
- Sec. 1206. Simplified method for taxing annuity distributions under certain employer plans.
- Sec. 1207. Repeal of 5-year income averaging for lump-sum distributions.
- Sec. 1208. Elimination of half-year requirements.
- Sec. 1209. Distributions under rural cooperative plans.
- Sec. 1210. Modification of additional participation requirements.
- Sec. 1211. Uniform retirement age.
- Sec. 1212. Treatment of leased employees.
- Sec. 1213. Full funding limitation for multiemployer plans.
- Sec. 1214. Elimination of partial termination rules for multiemployer plans.
- Sec. 1215. Elective deferrals under section 403(b).
- Sec. 1216. Uniform penalty provisions to apply to certain pension reporting requirements.
- Sec. 1217. Tax on prohibited transactions.
- Sec. 1218. Date for adoption of plan amendments.

### Subtitle B—Expanded Individual Retirement Accounts to Increase Coverage and Portability

#### CHAPTER 1—RETIREMENT SAVINGS INCENTIVES

##### SUBCHAPTER A—IRA DEDUCTION

- Sec. 1301. Increase in income limitations.

- Sec. 1302. Inflation adjustment for deductible amount and income limitations.  
 Sec. 1303. Coordination of IRA deduction limit with elective deferral limit.

#### SUBCHAPTER B—NONDEDUCTIBLE TAX-FREE IRAS

- Sec. 1311. Establishment of nondeductible tax-free individual retirement accounts.

#### CHAPTER 2—DISTRIBUTIONS AND INVESTMENTS

- Sec. 1321. Distributions from IRAs may be used without additional tax to purchase first homes, to pay higher education or financially devastating medical expenses, or by the unemployed.  
 Sec. 1322. Contributions must be held at least 5 years in certain cases.  
 Sec. 1323. Investments in qualified State prepaid tuition programs.

#### CHAPTER 3—TERMINATION OF CERTAIN PROVISIONS

- Sec. 1331. Termination of certain provisions

#### Subtitle C—Other Expansions of Pension Portability

- Sec. 1401. Alternative nondiscrimination rules for certain plans that provide for early participation.  
 Sec. 1402. Treatment of certain veterans' reemployment rights.  
 Sec. 1403. Elimination of special vesting rule for multiemployer plans.

#### Subtitle D—Conforming Amendments

- Sec. 1501. Conforming amendment relating to missing participants.  
 Sec. 1502. Conforming amendments relating to ERISA enforcement.

## 1 **TITLE II—REVENUE PROVISIONS**

### 2 **SEC. 1100. AMENDMENT OF 1986 CODE.**

3       Except as otherwise expressly provided, whenever in  
 4 this title an amendment or repeal is expressed in terms  
 5 of an amendment to, or repeal of, a section or other provi-  
 6 sion, the reference shall be considered to be made to a  
 7 section or other provision of the Internal Revenue Code  
 8 of 1986.

**Subtitle A—Expanded Pension  
Coverage and Simplification  
CHAPTER 1—THE NEST AND OTHER  
COVERAGE EXPANSION**

**SEC. 1101. ESTABLISHMENT OF NATIONAL EMPLOYEE SAV-  
INGS TRUSTS FOR EMPLOYEES OF SMALL EM-  
PLOYERS.**

(a) IN GENERAL.—Section 408 (relating to individual retirement accounts) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

“(p) NESTs.—

“(1) IN GENERAL.—For purposes of this title, the term ‘NEST’ means an individual retirement account or annuity established under a written plan of an eligible employer—

“(A) which meets the requirements of paragraphs (4), (5), (6), (7), and (8), and

“(B) under which contributions are made to NESTs solely in accordance with a qualified formula.

“(2) QUALIFIED FORMULA.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘qualified formula’ means a contribution formula which meets the requirements for—

“(i) a 3-percent formula under subparagraph (B), or

“(ii) a matching-contribution formula under subparagraph (C).

“(B) 3-PERCENT FORMULA.—

“(i) NONELECTIVE CONTRIBUTIONS.—The requirements of the 3-percent formula are met if, pursuant to the terms of the plan, the employer makes nonelective contributions of 3 percent of compensation for each eligible employee who has at least \$5,000 of compensation from the employer for the year.

“(ii) ELECTIVE CONTRIBUTIONS.—A plan shall not fail to meet the requirements of this subparagraph merely because, pursuant to the terms of the plan, an eligible employee may elect to have the employer make payments—

“(I) as elective contributions to the NEST on behalf of the employee, or

1 “(II) to the employee directly in  
2 cash.

3 “(C) MATCHING-CONTRIBUTION FOR-  
4 MULA.—The requirements of the matching-con-  
5 tribution formula are met if, pursuant to the  
6 terms of the plan—

7 “(i) the employer makes nonelective  
8 contributions of 1 percent of compensation  
9 for each eligible employee who has at least  
10 \$5,000 of compensation from the employer  
11 for the year,

12 “(ii) an eligible employee may elect to  
13 have the employer make payments—

14 “(I) as elective contributions to  
15 the NEST on behalf of the employee,  
16 or

17 “(II) to the employee directly in  
18 cash, and

19 “(iii) the employer makes matching  
20 contributions on behalf of each eligible em-  
21 ployee in an amount equal to—

22 “(I) 100 percent of the elective  
23 contributions of the employee to the  
24 extent such elective contributions do

1 not exceed 3 percent of the employee's  
2 compensation, and

3 “(II) a uniform percentage  
4 (which is at least 50 percent but not  
5 more than 100 percent) of the elective  
6 contributions of the employee to the  
7 extent that such elective contributions  
8 exceed 3 percent but do not exceed 5  
9 percent of the employee's compensa-  
10 tion.

11 “(D) DISCRETIONARY CONTRIBUTIONS.—A  
12 plan shall not be treated as failing to meet the  
13 requirements of this paragraph merely because,  
14 pursuant to the terms of the plan, an employer  
15 makes nonelective contributions under subpara-  
16 graph (B)(i) or (C)(i) in excess of 3 percent or  
17 1 percent of compensation, respectively, but  
18 only if all such contributions bear a uniform re-  
19 lationship to the compensation of each eligible  
20 employee and do not exceed 5 percent of com-  
21 pensation for any eligible employee.

22 “(E) LIMITATION ON ELECTIVE CONTRIBU-  
23 TIONS.—Elective contributions to a NEST  
24 under subparagraph (B)(ii) or (C)(ii) shall not  
25 be treated as made pursuant to a qualified for-

1           mula if such contributions on behalf of any em-  
 2           ployee for a year exceed the greater of \$5,000  
 3           or one-half of the limitation applicable for the  
 4           year to elective deferrals under section 402(g).

5           “(F) COMPENSATION LIMIT.—Contribu-  
 6           tions to a NEST shall not be treated as made  
 7           pursuant to a qualified formula if the annual  
 8           compensation taken into account for any em-  
 9           ployee under the formula exceeds the limitation  
 10          imposed by section 401(a)(17).

11          “(G) LOWER COMPENSATION THRESHOLD  
 12          PERMITTED.—A plan shall not be treated as  
 13          failing to meet the requirements of this para-  
 14          graph merely because, pursuant to the terms of  
 15          the plan, an employer makes nonelective con-  
 16          tributions under subparagraph (B)(i) or (C)(i)  
 17          to each eligible employee who has compensation  
 18          from the employer for the year in excess of a  
 19          uniform compensation threshold which is less  
 20          than \$5,000.

21          “(H) For purposes of this paragraph—

22               “(i) IN GENERAL.—The term ‘com-  
 23               pensation’ has the meaning given such  
 24               term by section 414(q)(3).



“(ii) SELF-EMPLOYED INDIVIDUALS.—Notwithstanding clause (i), in the case of an employee within the meaning of section 401(c)(1), compensation under section 414(q)(3) shall be determined without regard to paragraph (2)(A) (v) and (vi) of section 401(c).

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) ELIGIBLE EMPLOYER.—

“(i) IN GENERAL.—The term ‘eligible employer’ means, with respect to any year, an employer which had no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year.

“(ii) 2-YEAR GRACE PERIOD.—An eligible employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to be an eligible employer for any subsequent year shall be treated as an eligible employer for the 2 years following the last year the employer was an eligible employer. If such failure is due to any acquisition, disposition, or simi-

lar transaction involving an eligible employer, the preceding sentence shall apply only in accordance with rules similar to the rules of section 410(b)(6)(C)(i).

“(B) EMPLOYEE.—The term ‘employee’ includes an employee as defined in section 401(c)(1).

“(C) ELIGIBLE EMPLOYEE.—

“(i) IN GENERAL.—The term ‘eligible employee’ means, with respect to any year, any employee who, prior to such year—

“(I) completed 2 consecutive years of service with the employer, and

“(II) attained 21 years of age.

A plan may provide a uniform shorter period of service or lower age to apply in lieu of those under the preceding sentence.

“(ii) EXCLUDABLE EMPLOYEES.—An employer may elect not to treat employees described in section 410(b)(3) as eligible employees.

“(iii) YEAR OF SERVICE.—For purposes of this paragraph, an employee shall be treated as completing a year of service

1           for each year for which the employee re-  
2           ceives at least \$5,000 of compensation  
3           from the employer.

4           “(D) COMPENSATION.—For purposes of  
5           this paragraph, the term ‘compensation’ means  
6           wages within the meaning of section 3401(a)  
7           and all other payments of compensation to an  
8           employee by the employer with respect to which  
9           the employer is required to furnish the em-  
10          ployee a written statement under sections  
11          6041(d), 6051(a)(3), and 6052. In the case of  
12          an employee (within the meaning of section  
13          401(c)(1)), such term means earned income  
14          within the meaning of section 401(c)(2).

15          “(E) YEAR.—The term ‘year’ means the  
16          calendar year.

17          “(4) VESTING REQUIREMENTS.—A plan meets  
18          the requirements of this paragraph only if the em-  
19          ployee’s rights to the employee’s account balance  
20          under the NEST are nonforfeitable. Except as pro-  
21          vided in paragraph (5), the rules of subsection  
22          (k)(4) shall apply for purposes of this paragraph.

23          “(5) TWO-YEAR HOLDING PERIOD.—A plan  
24          meets the requirements of this paragraph only if the  
25          plan, and each NEST under the plan, prohibits the

1 withdrawal of contributions made for a year (and  
 2 any earnings allocable thereto) during the 2-year pe-  
 3 riod beginning on the first day of such year.

4 “(6) TIME CONTRIBUTIONS REQUIRED TO BE  
 5 MADE.—

6 “(A) ELECTIVE CONTRIBUTIONS.—A plan  
 7 meets the requirements of this paragraph only  
 8 if, under the terms of the plan, the employer  
 9 must make all elective contributions to a NEST  
 10 not later than the date on which such contribu-  
 11 tions would otherwise be required to be made  
 12 under title I of the Employee Retirement In-  
 13 come Security Act of 1974 if such contributions  
 14 were elective contributions under a qualified  
 15 cash or deferred arrangement under section  
 16 401(k).

17 “(B) NONELECTIVE AND MATCHING CON-  
 18 TRIBUTIONS.—

19 “(i) IN GENERAL.—A plan meets the  
 20 requirements of this paragraph only if,  
 21 under the terms of the plan, the employer  
 22 must make all nonelective and matching  
 23 contributions not later than the close of  
 24 the 45-day period following the last day of

1 the calendar quarter for which the con-  
2 tributions are to be made.

3 “(ii) COMPENSATION EXCEPTION.—If  
4 an employer does not make nonelective  
5 contributions to a NEST for employees  
6 whose compensation from the employer for  
7 the year is less than the threshold amount  
8 of \$5,000 (or such lower amount permitted  
9 under paragraph (2)(G)), then clause (i)  
10 shall apply with respect to nonelective con-  
11 tributions only for employees who received  
12 at least the threshold amount of compensa-  
13 tion as of the end of the applicable quar-  
14 ter. In the case of an employee who  
15 reaches the threshold amount in a calendar  
16 quarter other than the first calendar quar-  
17 ter, the employer shall make nonelective  
18 contributions for that calendar quarter and  
19 all preceding calendar quarters not later  
20 than the date prescribed for that quarter.

21 “(C) CONTRIBUTIONS AFTER YEAR-END.—

22 For purposes of this subsection, a contribution  
23 on account of a year which is made within 45  
24 days (or within a period prescribed by the Sec-  
25 retary) after the close of the year shall be

1           deemed to have been made on the last day of  
2           such year.

3           “(7) EMPLOYEE ELECTIONS.—A plan meets the  
4           requirements of this paragraph only if, under the  
5           terms of the plan—

6                   “(A) an employee may elect to terminate  
7           elective contributions (described in subpara-  
8           graphs (B)(ii) and (C)(ii) of paragraph (2)) at  
9           any time during the year, except that, if the  
10          employer so elects, the employee may not  
11          resume participation until the first day of the  
12          next year (or such earlier time as provided by  
13          the plan), and

14                   “(B) each employee eligible to partici-  
15          pate—

16                           “(i) may elect, during the 60-day pe-  
17                   riod before the beginning of any year, to  
18                   make elective contributions, or to modify  
19                   the amount of elective contributions, for  
20                   such year, and

21                           “(ii) may elect, within 30 days of be-  
22                   coming eligible to participate in the plan,  
23                   to make elective contributions for the year.

24           “(8) OTHER PLANS OF THE EMPLOYER.—

“(A) PROHIBITION ON OTHER PLANS WITH  
ELECTIVE OR MATCHING CONTRIBUTIONS.—A  
plan shall not meet the requirements of this  
paragraph for a year if the employer maintain-  
ing the plan maintains—

“(i) a plan providing for elective de-  
ferrals described in section 402(g)(3), or

“(ii) any plan described in section  
401(a) which provides for matching con-  
tributions (within the meaning of section  
401(m)(4)(A)).

For purposes of this subparagraph, an employer  
shall not be treated as maintaining a plan for  
a year if, under the plan, no contributions or  
benefit accruals may occur for such year.

“(B) COORDINATION WITH OTHER  
PLANS.—

“(i) OTHER PLANS DISREGARDED.—If  
an employer maintaining a plan to which  
this subsection applies also maintains 1 or  
more plans described in section 401(a),  
403(a), or 408(k) (other than a plan de-  
scribed in subparagraph (A)), the deter-  
mination of whether such plan satisfies the

1 requirements of this subsection shall be  
 2 made without regard to such other plans.

3 “(ii) NEST DISREGARDED.—Except  
 4 as provided in sections 404(m) and  
 5 415(a)(2), a plan to which this subsection  
 6 applies shall not be taken into account in  
 7 applying this title to any other plan de-  
 8 scribed in clause (i).

9 “(9) EMPLOYER OPTIONS.—

10 “(A) USE OF DESIGNATED FINANCIAL IN-  
 11 STITUTION.—A plan shall not be treated as fail-  
 12 ing to satisfy the requirements of this sub-  
 13 section or any other provision of this title mere-  
 14 ly because the employer makes all contributions  
 15 to the individual retirement accounts or annu-  
 16 ities of a designated trustee or issuer. The pre-  
 17 ceeding sentence shall not apply unless each  
 18 NEST plan participant is notified in writing  
 19 (either separately or as part of the notice under  
 20 subsection (l)(2)(C)) that the participant’s bal-  
 21 ance may be transferred without cost or penalty  
 22 to another individual account or annuity in ac-  
 23 cordance with section 408(d)(3)(G).

24 “(B) SUSPENSION OF PLAN.—Except as  
 25 provided by the Secretary, a plan shall not be



1           treated as failing to meet the requirements of  
 2           this subsection if, under the plan, the employer  
 3           may suspend all elective, matching, and non-  
 4           elective contributions under the plan after noti-  
 5           fying eligible employees of such suspension in  
 6           writing at least 30 days in advance. Such sus-  
 7           pension shall apply to contributions with re-  
 8           spect to compensation earned after the effective  
 9           date of the suspension. Only 1 suspension  
 10          under this subparagraph may take effect during  
 11          any year.

12          “(10) MODEL FORM TO BE PROVIDED.—The  
 13          Secretary shall issue a model form that may be used  
 14          by an eligible employer to establish a plan that satis-  
 15          fies all requirements of this subsection.”

16          (b) TAX TREATMENT OF NESTS.—

17               (1) DEDUCTIBILITY OF CONTRIBUTIONS.—

18                       (A) Section 219(b) (relating to maximum  
 19                       amount of deduction) is amended by adding at  
 20                       the end the following new paragraph:

21                       “(4) SPECIAL RULE FOR NESTS.—This section  
 22                       shall not apply with respect to any amount contrib-  
 23                       uted to a NEST established under section 408(p).”

24                       (B) Section 219(g)(5)(A) (defining active  
 25                       participant) is amended by striking “or” at the

1 end of clause (iv) and by adding at the end the  
 2 following new clause:

3 “(vi) any NEST (with the meaning of  
 4 section 408(p)), or”.

5 (C) Section 404 (relating to deductions for  
 6 contributions of an employer) is amended by  
 7 adding at the end the following new subsection:

8 “(m) SPECIAL RULES FOR NESTs.—

9 “(1) IN GENERAL.—Employer contributions to  
 10 a NEST (within the meaning of section 408(p))  
 11 shall be treated as if they are made to a plan subject  
 12 to the requirements of this section. Employer deduc-  
 13 tions for such contributions shall be subject to the  
 14 following limitations:

15 “(A) Contributions made for a calendar  
 16 year are deductible for the taxable year of the  
 17 employer with or within which the calendar year  
 18 ends.

19 “(B) Contributions shall be treated for  
 20 purposes of this subsection as if they were  
 21 made for a calendar year if such contributions  
 22 are made on account of such calendar year and  
 23 are made not later than the time prescribed in  
 24 section 408(p)(6).

1           “(C) The amount deductible in a taxable  
 2           year for a NEST shall not exceed the amount  
 3           contributed pursuant to a qualified formula  
 4           (within the meaning of section 408(p)(2)), and  
 5           shall be deductible without regard to the  
 6           amount contributed under any other plan sub-  
 7           ject to this section.

8           “(2) EFFECT ON STOCK BONUS AND PROFIT-  
 9           SHARING TRUST.—For any taxable year for which  
 10          the employer has a deduction under paragraph (1),  
 11          the otherwise applicable limitations in subsection  
 12          (a)(3)(A) with respect to a stock bonus or profit-  
 13          sharing trust maintained by the same employer shall  
 14          be reduced by the amount of the allowable deduction  
 15          under paragraph (1).

16          “(3) COORDINATION WITH SUBSECTION  
 17          (a)(7).—For purposes of applying the limitation of  
 18          subsection (a)(7) with respect to a plan to which this  
 19          section applies (other than a plan to which section  
 20          408(p) applies), a plan to which section 408(p) ap-  
 21          plies shall be treated as if it were a separate stock  
 22          bonus or profit-sharing trust of the employer main-  
 23          taining the plan.

24          “(4) COORDINATION WITH SUBSECTION (h).—  
 25          For any taxable year for which the employer has a

1 deduction under paragraph (1), the otherwise appli-  
 2 cable limitations in subsection (h) with respect to a  
 3 simplified employee pension maintained by the same  
 4 employer shall be reduced by the amount of the de-  
 5 duction allowable under paragraph (1).”

6 (2) CONTRIBUTIONS AND DISTRIBUTIONS.—

7 (A) Section 402 (relating to taxability of  
 8 beneficiary of employees’ trust) is amended by  
 9 adding at the end the following new subsection:  
 10 “(k) TREATMENT OF NESTs.—The rules of para-  
 11 graphs (1) and (3) of subsection (h) shall apply to con-  
 12 tributions and distributions with respect to a NEST under  
 13 section 408(p).”

14 (B) Section 408(d)(3) is amended by add-  
 15 ing at the end the following new subparagraph:

16 “(G) NESTs.—This paragraph shall apply  
 17 to an amount distributed to an individual with  
 18 respect to a NEST only to the extent such  
 19 amount is paid directly to an individual retire-  
 20 ment account or annuity for the benefit of such  
 21 individual in a direct transfer and, if applicable,  
 22 such amount continues to be subject to the 2-  
 23 year holding period described in subsection  
 24 (p)(5).”

1           (C) Clause (i) of section 457(c)(2)(B) is  
 2           amended by striking “section 402(h)(1)(B)”  
 3           and inserting “section 402 (h)(1)(B) or (k)”.

4           (c) REPORTING REQUIREMENTS.—

5           (1) IN GENERAL.—

6           (A) SUMMARY DESCRIPTIONS AND EM-  
 7           PLOYEE NOTIFICATION.—Section 408(l) is  
 8           amended by adding at the end the following  
 9           new paragraph:

10          “(2) NESTs.—

11           “(A) NO EMPLOYER REPORTS.—Except as  
 12           provided in this paragraph, no report shall be  
 13           required under this section by an employer  
 14           maintaining a NEST under subsection (p).

15           “(B) SUMMARY DESCRIPTION.—The trust-  
 16           ee or issuer of any individual retirement ac-  
 17           count or annuity under a NEST described in  
 18           subsection (p) shall prepare, and provide to the  
 19           employer maintaining the arrangement, each  
 20           year a description containing the following in-  
 21           formation:

22           “(i) The name and address of the em-  
 23           ployer and the trustee or issuer.

24           “(ii) The requirements for eligibility  
 25           for participation.

1                   “(iii) The benefits provided with re-  
2                   spect to the NEST.

3                   “(iv) The time and method of making  
4                   elections with respect to the NEST.

5                   “(v) The procedures for, and effects  
6                   of, distributions (including rollovers) from  
7                   the arrangement.

8                   “(C) EMPLOYEE NOTIFICATION.—The em-  
9                   ployer shall notify each employee immediately  
10                  before the period for which an election de-  
11                  scribed in subsection (p)(7)(B) may be made of  
12                  the employee’s opportunity to make such elec-  
13                  tion. Such notice shall include a copy of the de-  
14                  scription described in subparagraph (B) and  
15                  shall indicate whether matching contributions  
16                  will be made with respect to the employee’s  
17                  elective contributions, and the level of employer  
18                  matching and nonelective contributions which  
19                  will be made, for the year for which the election  
20                  may be made.”

21                  (B) CONFORMING AMENDMENT.—Section  
22                  408(1) is amended by striking “an employer”  
23                  and inserting—

24                  “(1) IN GENERAL.—An employer”.

1           (2) TRUSTEE AND ISSUER REPORTS.—Section  
 2           408(i) (relating to reports of trustees or issuers) is  
 3           amended by adding at the end thereof the following  
 4           new flush sentence:

5    “In the case of an individual retirement account or annu-  
 6    ity maintained in connection with a NEST described in  
 7    subsection (p), only 1 report under this subsection shall  
 8    be required to be submitted each calendar year to the Sec-  
 9    retary (at the time provided under paragraph (2)) but, in  
 10   addition to the report under this subsection, there shall  
 11   be furnished, within 30 days after each calendar quarter,  
 12   to the individual on whose behalf the account is main-  
 13   tained a statement with respect to the account balance as  
 14   of the close of, and the account activity during, such cal-  
 15   endar quarter.”

16           (3) PENALTIES FOR FAILURE TO REPORT.—  
 17           Section 6693 is amended by redesignating sub-  
 18           section (c) as subsection (d) and by inserting after  
 19           subsection (b) the following new subsection:

20           “(c) PENALTIES RELATING TO NESTs.—

21           “(1) EMPLOYER PENALTIES.—An employer who  
 22           fails to provide 1 or more notices required by section  
 23           408(l)(2)(C) shall pay a penalty of \$50 for each day  
 24           on which such failures continue.

1           “(2) TRUSTEE PENALTIES.—A trustee who  
2 fails—

3           “(A) to provide 1 or more statements re-  
4 quired by the last sentence of section 408(i)  
5 shall pay a penalty of \$50 for each day on  
6 which such failures continue, or

7           “(B) to provide 1 or more summary de-  
8 scriptions required by section 408(l)(2)(B) shall  
9 pay a penalty of \$50 for each day on which  
10 such failures continue.

11           “(3) REASONABLE CAUSE EXCEPTION.—No  
12 penalty shall be imposed under this subsection with  
13 respect to any failure which the taxpayer shows was  
14 due to reasonable cause.”

15 (d) CONFORMING AMENDMENTS.—

16           (1) Section 280G(b)(6) is amended by striking  
17 the “or” at the end of subparagraph (B), by striking  
18 the period at the end of subparagraph (C) and in-  
19 serting “, or”, and by adding after subparagraph  
20 (C) the following new subparagraph:

21           “(D) a NEST described in section  
22 408(p).”

23           (2) Section 402(g)(3) is amended by striking  
24 “and” at the end of subparagraph (B), by striking  
25 the period at the end of subparagraph (C) and in-



1       serting “, and”, and by adding after subparagraph  
2       (C) the following new subparagraph:

3               “(D) any elective contribution under sec-  
4               tion 408(p)(2)(B)(ii) or (C)(ii).”

5               (3) Subsections (b), (c), (m)(4)(B), and  
6       (n)(3)(B) of section 414 are each amended by in-  
7       serting “408(p),” after “408(k),”.

8               (4) Section 415(a)(2) is amended by adding at  
9       the end the following new flush sentence:

10      “A plan described in section 408(p) shall not be subject  
11      to this section, except that if an employer that maintains  
12      such plan also maintains 1 or more plans, annuities, or  
13      accounts subject to this section, such plan shall be taken  
14      into account in determining whether any such other plans,  
15      annuities, or accounts satisfy the requirements of this sec-  
16      tion.”

17              (5) Section 4972(d)(1)(A) is amended by strik-  
18      ing “and” at the end of clause (ii), by striking the  
19      period at the end of clause (iii) and inserting “,  
20      and”, and by adding after clause (iii) the following  
21      new clause:

22                      “(iv) any NEST (within the meaning  
23                      of section 408(p)).”

24              (6)(A) Paragraph (5) of section 3121(a) is  
25      amended by striking “or” at the end of subpara-

graph (F), by inserting “or” at the end of subparagraph (G), and by adding at the end the following new subparagraph:

“(H) under a plan to which section 408(p) applies, other than any elective contributions under subparagraphs (B)(ii) and (C)(ii) of section 408(p)(2),”.

(B) Section 209(a)(4) of the Social Security Act is amended by inserting “, or (J) under a plan to which section 408(p) of such Code applies, other than any elective contributions under subparagraphs (B)(ii) and (C)(ii) of section 408(p)(2) of such Code” before the semicolon at the end thereof.

(C) Paragraph (5) of section 3306(b) is amended by striking “or” at the end of subparagraph (F), by inserting “or” at the end of subparagraph (G), and by adding at the end the following new subparagraph:

“(H) under a plan to which section 408(p) applies, other than any elective contributions under subparagraphs (B)(ii) and (C)(ii) of section 408(p)(2),”.

(D) Paragraph (12) of section 3401(a) is amended by adding the following new subparagraph:

1 “(D) under or to a NEST described in sec-  
 2 tion 408(p); or”.

3 (e) EFFECTIVE DATE.—The amendments made by  
 4 this section shall apply to years beginning after December  
 5 31, 1996.

6 **SEC. 1102. TAX-EXEMPT ORGANIZATIONS ELIGIBLE UNDER**  
 7 **SECTION 401(k).**

8 (a) IN GENERAL.—Subparagraph (B) of section  
 9 401(k)(4) is amended to read as follows:

10 “(B) ELIGIBILITY OF STATE AND LOCAL  
 11 GOVERNMENTS AND TAX-EXEMPT ORGANIZA-  
 12 TIONS.—

13 “(i) TAX-EXEMPTS ELIGIBLE.—Ex-  
 14 cept as provided in clause (ii), any organi-  
 15 zation exempt from tax under this subtitle  
 16 may include a qualified cash or deferred  
 17 arrangement as part of a plan maintained  
 18 by it.

19 “(ii) GOVERNMENTS INELIGIBLE.—A  
 20 cash or deferred arrangement shall not be  
 21 treated as a qualified cash or deferred ar-  
 22 rangement if it is part of a plan main-  
 23 tained by a State or local government or  
 24 political subdivision thereof, or any agency  
 25 or instrumentality thereof. This clause

shall not apply to a rural cooperative plan or to a plan of an employer described in clause (iii).

“(iii) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—An employer which is an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of an Indian tribal government or subdivision thereof may include a qualified cash or deferred arrangement as part of a plan maintained by it.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 1996, but shall not apply to any cash or deferred arrangement to which clause (i) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies.

**SEC. 1103. NONDISCRIMINATION RULES FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS AND MATCHING CONTRIBUTIONS.**

(a) ALTERNATIVE METHODS OF SATISFYING SECTION 401(k) NONDISCRIMINATION TESTS.—Section 401(k) (relating to cash or deferred arrangements) is

1 amended by adding at the end the following new para-  
 2 graph:

3 “(11) ALTERNATIVE METHODS OF MEETING  
 4 NONDISCRIMINATION REQUIREMENTS.—

5 “(A) IN GENERAL.—A cash or deferred ar-  
 6 rangement shall be treated as meeting the re-  
 7 quirements of paragraph (3)(A)(ii) if such ar-  
 8 rangement—

9 “(i) meets the contribution require-  
 10 ments of subparagraph (B) or (C), and

11 “(ii) meets the notice requirements of  
 12 subparagraph (D).

13 “(B) NONELECTIVE AND MATCHING CON-  
 14 TRIBUTIONS.—

15 “(i) IN GENERAL.—The requirements  
 16 of this subparagraph are met if the re-  
 17 quirements of clauses (ii) and (iii) are met.

18 “(ii) NONELECTIVE CONTRIBU-  
 19 TIONS.—The requirements of this clause  
 20 are met if, under the arrangement, the em-  
 21 ployer is required, without regard to  
 22 whether the employee makes an elective  
 23 contribution or employee contribution, to  
 24 make a contribution to a defined contribu-  
 25 tion plan on behalf of each employee who

1 is not a highly compensated employee and  
 2 who is eligible to participate in the ar-  
 3 rangement in an amount equal to at least  
 4 1 percent of the employee's compensation.

5 “(iii) MATCHING CONTRIBUTIONS.—  
 6 The requirements of this clause are met if,  
 7 under the arrangement, the employer  
 8 makes matching contributions on behalf of  
 9 each employee who is not a highly com-  
 10 pensated employee in an amount equal  
 11 to—

12 “(I) 100 percent of the elective  
 13 contributions of the employee to the  
 14 extent such elective contributions do  
 15 not exceed 3 percent of the employee's  
 16 compensation, and

17 “(II) 50 percent of the elective  
 18 contributions of the employee to the  
 19 extent that such elective contributions  
 20 exceed 3 percent but do not exceed 5  
 21 percent of the employee's compensa-  
 22 tion.

23 “(iv) RATE FOR HIGHLY COM-  
 24 PENSATED EMPLOYEES.—The require-  
 25 ments of clause (iii) are not met if, under

1 the arrangement, the rate of matching con-  
2 tribution with respect to any rate of elec-  
3 tive contribution of a highly compensated  
4 employee is greater than that with respect  
5 to an employee who is not a highly com-  
6 pensated employee. For purposes of this  
7 clause, to the extent provided in regula-  
8 tions, the last sentences of paragraph  
9 (3)(A) and subsection (m)(2)(B) shall not  
10 apply.

11 “(v) ALTERNATIVE PLAN DESIGNS.—  
12 If the rate of matching contribution with  
13 respect to any rate of elective contribution  
14 is not equal to the percentage required  
15 under clause (iii), an arrangement shall  
16 not be treated as failing to meet the re-  
17 quirements of clause (iii) if—

18 “(I) the rate of an employer’s  
19 matching contribution does not in-  
20 crease as an employee’s rate of elec-  
21 tive contribution increase, and

22 “(II) the aggregate amount of  
23 matching contributions at such rate of  
24 elective contribution is at least equal  
25 to the aggregate amount of matching

1 contributions which would be made if  
2 matching contributions were made on  
3 the basis of the percentages described  
4 in clause (iii).

5 “(C) NONELECTIVE CONTRIBUTIONS.—

6 The requirements of this subparagraph are met  
7 if, under the arrangement, the employer is re-  
8 quired, without regard to whether the employee  
9 makes an elective contribution or employee con-  
10 tribution, to make a contribution to a defined  
11 contribution plan on behalf of each employee  
12 who is not a highly compensated employee and  
13 who is eligible to participate in the arrangement  
14 in an amount equal to at least 3 percent of the  
15 employee’s compensation.

16 “(D) NOTICE REQUIREMENT.—An ar-  
17 rangement meets the requirements of this para-  
18 graph if, under the arrangement, each employee  
19 eligible to participate is, within a reasonable pe-  
20 riod before any year, given written notice of the  
21 employee’s rights and obligations under the ar-  
22 rangement which—

23 “(i) is sufficiently accurate and com-  
24 prehensive to reasonably apprise the em-  
25 ployee of such rights and obligations, and



1 “(ii) is written in a manner calculated  
2 to be understood by the average employee  
3 eligible to participate.

4 “(E) OTHER REQUIREMENTS.—

5 “(i) WITHDRAWAL AND VESTING RE-  
6 STRICTIONS.—An arrangement shall not be  
7 treated as meeting the requirements of  
8 subparagraph (B) or (C) of this paragraph  
9 unless the requirements of subparagraphs  
10 (B) and (C) of paragraph (2) are met with  
11 respect to all employer contributions (in-  
12 cluding matching contributions) taken into  
13 account in determining whether the re-  
14 quirements of subparagraphs (B) and (C)  
15 of this paragraph are met.

16 “(ii) SOCIAL SECURITY AND SIMILAR  
17 CONTRIBUTIONS NOT TAKEN INTO AC-  
18 COUNT.—An arrangement shall not be  
19 treated as meeting the requirements of  
20 subparagraph (B) or (C) unless such re-  
21 quirements are met without regard to sub-  
22 section (l), and, for purposes of subsection  
23 (l), employer contributions under subpara-  
24 graph (B) or (C) shall not be taken into  
25 account.

1           “(F) OTHER PLANS.—An arrangement  
 2           shall be treated as meeting the requirements  
 3           under subparagraph (A)(i) if any other plan  
 4           maintained by the employer meets such require-  
 5           ments with respect to employees eligible under  
 6           the arrangement.”

7           (b) ALTERNATIVE METHODS OF SATISFYING SEC-  
 8           TION 401(m) NONDISCRIMINATION TESTS.—Section  
 9           401(m) (relating to nondiscrimination test for matching  
 10          contributions and employee contributions) is amended by  
 11          redesignating paragraph (10) as paragraph (11) and by  
 12          adding after paragraph (9) the following new paragraph:

13           “(10) ALTERNATIVE METHOD OF SATISFYING  
 14          TESTS.—

15           “(A) IN GENERAL.—A defined contribution  
 16          plan shall be treated as meeting the require-  
 17          ments of paragraph (2) with respect to match-  
 18          ing contributions if the plan—

19                   “(i) meets the contribution require-  
 20                   ments of subparagraph (B) or (C) of sub-  
 21                   section (k)(11),

22                   “(ii) meets the notice requirements of  
 23                   subsection (k)(11)(D), and

24                   “(iii) meets the requirements of sub-  
 25                   paragraphs (B) and (C).

“(B) LIMITATION ON MATCHING CONTRIBUTIONS.—The requirements of this subparagraph are met if—

“(i) matching contributions on behalf of any employee may not be made with respect to an employee’s contributions or elective deferrals in excess of 6 percent of the employee’s compensation,

“(ii) the rate of an employer’s matching contribution does not increase as the rate of an employee’s contributions or elective deferrals increase, and

“(iii) the matching contribution with respect to any highly compensated employee at any rate of an employee contribution or rate of elective deferral is not greater than that with respect to an employee who is not a highly compensated employee.

To the extent provided in regulations, the last sentences of paragraph (2)(B) and subsection (k)(3)(A) shall not apply for purposes of clause (iii).

“(C) TEST MUST BE MET SEPARATELY.—  
If this paragraph applies to any matching con-

1           tributions, such contributions shall not be taken  
 2           into account in determining whether employee  
 3           contributions satisfy the requirements of this  
 4           subsection.”

5           (c) YEAR FOR COMPUTING NONHIGHLY COM-  
 6           PENSATED EMPLOYEE PERCENTAGE.—

7           (1) CASH OR DEFERRED ARRANGEMENTS.—

8           Clause (ii) of section 401(k)(3)(A) is amended—

9                   (A) by striking “such year” and inserting  
 10           “the plan year”,

11                   (B) by striking “for such plan year” and  
 12           inserting “for the preceding plan year”, and

13                   (C) by adding at the end the following new  
 14           sentence: “An arrangement may apply this  
 15           clause by using the plan year rather than the  
 16           preceding plan year if the employer so elects,  
 17           except that if such an election is made, it may  
 18           not be changed except as provided by the Sec-  
 19           retary.”

20           (2) MATCHING AND EMPLOYEE CONTRIBU-  
 21           TIONS.—Section 401(m)(2)(A) is amended—

22                   (A) by inserting “for such plan year” after  
 23           “highly compensated employees”,

(B) by inserting “for the preceding plan year” after “eligible employees” each place it appears in clause (i) and clause (ii), and

(C) by adding at the end the following flush sentence: “This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided the Secretary.”

(d) SPECIAL RULE FOR DETERMINING AVERAGE DEFERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—

(1) Paragraph (3) of section 401(k) is amended by adding at the end the following new subparagraph:

“(E) For purposes of this paragraph, in the case of the first plan year of any plan, the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

“(i) 3 percent, or

“(ii) the actual deferral percentage of nonhighly compensated employees determined for such first plan year in the case of—

1 “(I) an employer who elects to  
2 have this clause apply, or  
3 “(II) except to the extent pro-  
4 vided by the Secretary, a successor  
5 plan.”

6 (2) Paragraph (3) of section 401(m) is amend-  
7 ed by adding at the end the following: “Rules similar  
8 to the rules of subsection (k)(3)(E) shall apply for  
9 purposes of this subsection.”

10 (e) DISTRIBUTION OF EXCESS CONTRIBUTIONS AND  
11 EXCESS AGGREGATE CONTRIBUTIONS.—

12 (1) Subparagraph (C) of section 401(k)(8) (re-  
13 lating to arrangement not disqualified if excess con-  
14 tributions distributed) is amended by striking “on  
15 the basis of the respective portions of the excess con-  
16 tributions attributable to each of such employees”  
17 and inserting “on the basis of the amount of con-  
18 tributions by, or on behalf of, each of such employ-  
19 ees”.

20 (2) Subparagraph (C) of section 401(m)(6) (re-  
21 lating to method of distributing excess aggregate  
22 contributions) is amended by striking “on the basis  
23 of the respective portions of such amounts attrib-  
24 utable to each of such employees” and inserting “on

1 the basis of the amount of contributions on behalf  
 2 of, or by, each such employee”.

3 (f) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by  
 5 this section shall apply to plan years beginning after  
 6 December 31, 1998.

7 (2) SUBSECTIONS (c), (d), AND (e).—The  
 8 amendments made by subsections (c), (d), and (e)  
 9 shall apply to plan years beginning after December  
 10 31, 1996.

11 **SEC. 1104. REPEAL OF FAMILY AGGREGATION.**

12 (a) REPEAL OF FAMILY AGGREGATION RULES.—

13 (1) IN GENERAL.—Paragraph (6) of section  
 14 414(q) is hereby repealed.

15 (2) COMPENSATION LIMIT.—Paragraph (17)(A)  
 16 of section 401(a) is amended by striking the last  
 17 sentence.

18 (3) DEDUCTION.—Subsection (l) of section 404  
 19 is amended by striking the last sentence.

20 (b) EFFECTIVE DATE.—The amendments made by  
 21 this section shall apply to years beginning after December  
 22 31, 1996.

1 **SEC. 1105. DEFINITION OF HIGHLY COMPENSATED EM-**  
 2 **PLOYEES.**

3 (a) IN GENERAL.—Paragraph (1) of section 414(q)  
 4 (defining highly compensated employee) is amended to  
 5 read as follows:

6 “(1) IN GENERAL.—The term ‘highly com-  
 7 pensated employee’ means any employee who—

8 “(A) was a 5-percent owner at any time  
 9 during the year or the preceding year, or

10 “(B) for the preceding year had compensa-  
 11 tion from the employer in excess of \$80,000.

12 The Secretary shall adjust the \$80,000 amount  
 13 under subparagraph (B) at the same time and in the  
 14 same manner as under section 415(d), except that  
 15 the base period shall be the calendar quarter ending  
 16 September 30, 1996.”

17 (b) CONFORMING AMENDMENTS.—

18 (1)(A) Subsection (q) of section 414 is amended  
 19 by striking paragraphs (2), (4), (5), (8), (10), and  
 20 (12) and by redesignating paragraphs (3), (7), (9),  
 21 and (11) as paragraphs (2) through (5), respec-  
 22 tively.

23 (B) Sections 129(d)(8)(B), 401(a)(5)(D)(ii),  
 24 408(k)(2)(C), and 416(i)(1)(D) are each amended  
 25 by striking “section 414(q)(7)” and inserting “sec-  
 26 tion 414(q)(3)”.



1 (C) Section 416(i)(1)(A) is amended by striking  
2 “section 414(q)(8)” and inserting “section  
3 414(r)(9)”.

4 (2)(A) Section 414(r) is amended by adding at  
5 the end the following new paragraph:

6 “(9) EXCLUDED EMPLOYEES.—For purposes of  
7 paragraph (2)(A), the following employees shall be  
8 excluded:

9 “(A) Employees who have not completed 6  
10 months of service.

11 “(B) Employees who normally work less  
12 than 17½ hours per week.

13 “(C) Employees who normally work not  
14 more than 6 months during any year.

15 “(D) Employees who have not attained the  
16 age of 21.

17 “(E) Except to the extent provided in reg-  
18 ulations, employees who are included in a unit  
19 of employees covered by an agreement which  
20 the Secretary of Labor finds to be a collective  
21 bargaining agreement between employee rep-  
22 resentatives and the employer.”

23 (B) Subparagraph (A) of section 414(r)(2) is  
24 amended by striking “subsection (q)(8)” and insert-  
25 ing “paragraph (9)”.

1           (3) Section 1114(c)(4) of the Tax Reform Act  
 2           of 1986 is amended by adding at the end the follow-  
 3           ing new sentence: “Any reference in this paragraph  
 4           to section 414(q) shall be treated as a reference to  
 5           such section as in effect on the day before the date  
 6           of the enactment of the Retirement Savings and Se-  
 7           curity Act.”.

8           (c) EFFECTIVE DATE.—The amendments made by  
 9           this section shall apply to years beginning after December  
 10          31, 1996, except that in determining whether an employee  
 11          is a highly compensated employee for years beginning in  
 12          1997, such amendments shall be treated as having been  
 13          in effect for years beginning in 1996.

14   **SEC. 1106. REPEAL OF LIMITATION IN CASE OF DEFINED**  
 15                   **BENEFIT PLAN AND DEFINED CONTRIBUTION**  
 16                   **PLAN FOR SAME EMPLOYEE.**

17          (a) IN GENERAL.—Section 415(e) is repealed.

18          (b) CONFORMING AMENDMENTS.—

19                  (1) Paragraph (1) of section 415(a) is amend-  
 20          ed—

21                          (A) by adding “or” at the end of subpara-  
 22                          graph (A),

23                          (B) by striking “, or” at the end of sub-  
 24                          paragraph (B) and inserting a period, and

25                          (C) by striking subparagraph (C).

1           (2) Subparagraph (B) of section 415(b)(5) is  
2           amended by striking “and subsection (e)”.

3           (3) Paragraph (1) of section 415(f) is amended  
4           by striking “subsections (b), (c), and (e)” and in-  
5           serting “subsections (b) and (c)”.

6           (4) Subsection (g) of section 415 is amended by  
7           striking “subsections (e) and (f)” in the last sen-  
8           tence and inserting “subsection (f)”.

9           (5) Clause (i) of section 415(k)(2)(A) is amend-  
10          ed to read as follows:

11                   “(i) any contribution made directly by  
12                   an employee under such an arrangement  
13                   shall not be treated as an annual addition  
14                   for purposes of subsection (c), and”.

15          (6) Clause (ii) of section 415(k)(2)(A) is  
16          amended by striking “subsections (c) and (e)” and  
17          inserting “subsection (c)”.

18          (7) Section 416 is amended by striking sub-  
19          section (h).

20          (c) EFFECTIVE DATE.—The amendments made by  
21          this section shall apply to years beginning after December  
22          31, 1998.

1 **SEC. 1107. CONTRIBUTIONS ON BEHALF OF DISABLED EM-**  
 2 **PLOYEES.**

3 (a) ALL DISABLED PARTICIPANTS RECEIVING CON-  
 4 TRIBUTIONS.—Section 415(c)(3)(C) is amended by adding  
 5 at the end the following: “If a defined contribution plan  
 6 provides for the continuation of contributions on behalf  
 7 of all participants described in clause (i) for a fixed or  
 8 determinable period, this subparagraph shall be applied  
 9 without regard to clauses (ii) and (iii).”

10 (b) EFFECTIVE DATE.—The amendment made by  
 11 this section shall apply to years beginning after December  
 12 31, 1996.

13 **SEC. 1108. PLANS COVERING SELF-EMPLOYED INDIVID-**  
 14 **UALS.**

15 (a) AGGREGATION RULES.—Section 401(d) (relating  
 16 to additional requirements for qualification of trusts and  
 17 plans benefiting owner-employees) is amended to read as  
 18 follows:

19 “(d) CONTRIBUTION LIMIT ON OWNER-EMPLOY-  
 20 EES.—A trust forming part of a pension or profit-sharing  
 21 plan which provides contributions or benefits for employ-  
 22 ees some or all of whom are owner-employees shall con-  
 23 stitute a qualified trust under this section only if, in addi-  
 24 tion to meeting the requirements of subsection (a), the  
 25 plan provides that contributions on behalf of any owner-  
 26 employee may be made only with respect to the earned

1 income of such owner-employee which is derived from the  
 2 trade or business with respect to which such plan is estab-  
 3 lished.”

4 (b) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to plan years beginning after De-  
 6 cember 31, 1996.

7 **SEC. 1109. TRUST REQUIREMENT FOR DEFERRED COM-**  
 8 **PENSATION PLANS OF STATE AND LOCAL**  
 9 **GOVERNMENTS.**

10 (a) IN GENERAL.—Section 457 is amended by adding  
 11 at the end the following new subsection:

12 “(g) GOVERNMENTAL PLANS MUST MAINTAIN SET-  
 13 ASIDES FOR EXCLUSIVE BENEFIT OF PARTICIPANTS.—

14 “(1) IN GENERAL.—A plan maintained by an  
 15 eligible employer described in subsection (e)(1)(A)  
 16 shall not be treated as an eligible deferred com-  
 17 pensation plan unless all amounts, property and  
 18 rights, and income of the plan described in subpara-  
 19 graphs (A), (B), and (C) of subsection (b)(6) are  
 20 held in trust for the exclusive benefit of participants  
 21 and their beneficiaries.

22 “(2) TAXABILITY OF TRUSTS AND PARTICI-  
 23 PANTS.—For purposes of this title—

1           “(A) a trust described in paragraph (1)  
 2           shall be treated as an organization exempt from  
 3           taxation under section 501(a), and

4           “(B) notwithstanding any other provision  
 5           of this title, amounts in the trust shall be in-  
 6           cludible in the gross income of participants and  
 7           beneficiaries only to the extent, and at the time,  
 8           provided in this section.

9           “(3) CUSTODIAL ACCOUNT AND CONTRACTS.—  
 10          For purposes of this subsection, custodial accounts  
 11          and contracts described in section 401(f) shall be  
 12          treated as trusts under rules similar to the rules  
 13          under section 401(f).”

14          (b) CONFORMING AMENDMENT.—Paragraph (6) of  
 15          section 457(b) is amended by inserting “except as pro-  
 16          vided in subsection (g),” before “which provides that”.

17          (c) EFFECTIVE DATES.—

18               (1) IN GENERAL.—Except as provided in para-  
 19               graph (2), the amendments made by this section  
 20               shall apply to amounts, property and rights, and in-  
 21               come described in subparagraphs (A), (B), and (C)  
 22               of section 457(b)(6) of the Internal Revenue Code of  
 23               1986 held by a plan on and after the date of the en-  
 24               actment of this Act.

1           (2) TRANSITION RULE.—In the case of  
 2           amounts, property and rights, and income described  
 3           in paragraph (1) under a plan before the last day  
 4           of the first calendar quarter beginning after the  
 5           close of the first regular session (beginning after the  
 6           date of the enactment of this Act) of the State legis-  
 7           lature of the State in which the governmental entity  
 8           maintaining the plan is located, a trust need not be  
 9           established by reason of the amendments made by  
 10          this section before such last day. For purposes of  
 11          the preceding sentence, in the case of a State that  
 12          has a 2-year legislative session, each year of such  
 13          session shall be deemed to be a separate regular ses-  
 14          sion of the State legislature.

15       **CHAPTER 2—SIMPLIFICATION AND COST**  
 16                               **SAVINGS**

17       **SEC. 1201. TREATMENT OF GOVERNMENTAL AND MULTIEM-**  
 18                               **PLOYER PLANS UNDER SECTION 415 AND**  
 19                               **TREATMENT OF EXCESS BENEFIT PLANS.**

20          (a) COMPENSATION LIMIT.—Subsection (b) of sec-  
 21          tion 415 is amended by adding immediately after para-  
 22          graph (10) the following new paragraph:

23               “(11) SPECIAL LIMITATION RULE FOR GOVERN-  
 24          MENTAL AND MULTIEMPLOYER PLANS.—In the case  
 25          of a governmental plan (as defined in section

1       414(d)) or a multiemployer plan (as defined in sec-  
 2       tion 414(f)), subparagraph (B) of paragraph (1)  
 3       shall not apply.”

4       (b) TREATMENT OF CERTAIN EXCESS BENEFIT  
 5 PLANS.—

6           (1) IN GENERAL.—Section 415 is amended by  
 7       adding at the end the following new subsection:

8       “(m) TREATMENT OF QUALIFIED GOVERNMENTAL  
 9 EXCESS BENEFIT ARRANGEMENTS.—

10           “(1) GOVERNMENTAL PLAN NOT AFFECTED.—

11       In determining whether a governmental plan (as de-  
 12       fined in section 414(d)) meets the requirements of  
 13       this section, benefits provided under a qualified gov-  
 14       ernmental excess benefit arrangement shall not be  
 15       taken into account. Income accruing to a govern-  
 16       mental plan (or to a trust that is maintained solely  
 17       for the purpose of providing benefits under a quali-  
 18       fied governmental excess benefit arrangement) in re-  
 19       spect of a qualified governmental excess benefit ar-  
 20       rangement shall constitute income derived from the  
 21       exercise of an essential governmental function upon  
 22       which such governmental plan (or trust) shall be ex-  
 23       empt from tax under section 115.

24           “(2) TAXATION OF PARTICIPANT.—For pur-  
 25       poses of this chapter—



1           “(A) the taxable year or years for which  
 2           amounts in respect of a qualified governmental  
 3           excess benefit arrangement are includible in  
 4           gross income by a participant, and

5           “(B) the treatment of such amounts when  
 6           so includible by the participant,  
 7           shall be determined as if such qualified govern-  
 8           mental excess benefit arrangement were treated as a  
 9           plan for the deferral of compensation which is main-  
 10          tained by a corporation not exempt from tax under  
 11          this chapter and which does not meet the require-  
 12          ments for qualification under section 401.

13           “(3) QUALIFIED GOVERNMENTAL EXCESS BEN-  
 14          EFIT ARRANGEMENT.—For purposes of this sub-  
 15          section, the term ‘qualified governmental excess ben-  
 16          efit arrangement’ means a portion of a governmental  
 17          plan if—

18           “(A) such portion is maintained solely for  
 19           the purpose of providing to participants in the  
 20           plan that part of the participant’s annual bene-  
 21           fit otherwise payable under the terms of the  
 22           plan that exceeds the limitations on benefits im-  
 23           posed by this section,

“(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

“(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits.”

(2) RULES RELATING TO EXCESS BENEFIT ARRANGEMENT.—

(A) APPLICATION OF SECTION 457.—Subsection (e) of section 457 is amended by adding at the end the following new paragraph:

“(14) TREATMENT OF EXCESS BENEFIT ARRANGEMENTS.—

“(A) IN GENERAL.—Subsections (b)(2) and (c)(1) shall not apply to any excess benefit arrangement and benefits provided under such an arrangement shall not be taken into account in determining whether any other plan is an eligible deferred compensation plan.

“(B) EXCESS BENEFIT ARRANGEMENT DEFINED.—For purposes of this section, the term ‘excess benefit arrangement’ means a plan which is maintained by an eligible employer

solely for purposes of providing benefits for certain employees in excess of the limits on contributions and benefits imposed by section 415. Such term includes a qualified governmental excess benefit arrangement (as defined in section 415(m)(3)).”

(B) CONFORMING AMENDMENT.—Paragraph (2) of section 457(f) is amended by striking “and” at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting “, and”, and by inserting immediately thereafter the following new subparagraph:

“(E) an excess benefit arrangement (as defined in subsection (e)(14)(B)).”

(c) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS.—Paragraph (2) of section 415(b) is amended by adding at the end the following new subparagraph:

“(I) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS PROVIDED UNDER GOVERNMENTAL AND MULTIEMPLOYER PLANS.—Subparagraph (C) of this paragraph and paragraph (5) shall not apply to—

“(i) income received from a governmental plan (as defined in section 414(d))

or a multiemployer plan (as defined in section 414(f)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or

“(ii) amounts received from a governmental or multiemployer plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.”

(d) REVOCATION OF GRANDFATHER ELECTION.—

(1) IN GENERAL.—Subparagraph (C) of section 415(b)(10) is amended by adding at the end the following new clause:

“(ii) REVOCATION OF ELECTION.—An election under clause (i) may be revoked not later than the last day of the third plan year beginning after the date of the enactment of this clause. The revocation shall apply to all plan years to which the election applied and to all subsequent plan years. Any amount paid by a plan in a taxable year ending after the revocation shall be includible in income in such taxable year under the rules of this chapter in ef-

fect for such taxable year, except that, for purposes of applying the limitations imposed by this section, any portion of such amount which is attributable to any taxable year during which the election was in effect shall be treated as received in such taxable year.”

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 415(b)(10) is amended by striking “This” and inserting:

“(i) IN GENERAL.—This”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) shall apply to years beginning after December 31, 1996.

(2) SPECIAL RULES FOR GOVERNMENTAL PLANS.—

(A) IN GENERAL.—In the case of a governmental plan, the amendments made by subsections (a), (b), and (c) shall apply to years beginning after December 31, 1995.

(B) REVOCATIONS.—The amendments made by subsection (d) shall apply with respect to revocations adopted after the date of the enactment of this Act.

(C) TREATMENT FOR YEARS BEGINNING BEFORE JANUARY 1, 1996.—Nothing in the amendments made by this section shall be construed to imply that a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) fails to satisfy the requirements of section 415 of such Code for any year beginning before January 1, 1996.

**SEC. 1202. DEFINITION OF COMPENSATION FOR SECTION 415 PURPOSES.**

(a) GENERAL RULE.—Section 415(c)(3) (defining participant’s compensation) is amended by adding at the end the following new subparagraph:

“(D) CERTAIN DEFERRALS INCLUDED.—

The term ‘participant’s compensation’ shall include—

“(i) any elective deferral (as defined in section 402(g)(3)),

“(ii) any amount which is contributed by the employer at the election of the employee and which is not includible in the gross income of the employee pursuant to section 125, and

“(iii) any amount which is deferred at the election of the employee and which is

1 not includible in the gross income of the  
 2 employee pursuant to section 457.”

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 414(q)(3), as redesignated by sec-  
 5 tion 1105, is amended to read as follows:

6 “(3) COMPENSATION.—For purposes of this  
 7 subsection, the term ‘compensation’ has the meaning  
 8 given such term by section 415(c)(3).”

9 (2) Section 414(s)(2) is amended by inserting  
 10 “not” after “elect” in the text and heading thereof.

11 (c) EFFECTIVE DATE.—The amendments made by  
 12 this section shall apply to years beginning after December  
 13 31, 1996.

14 **SEC. 1203. ASSUMPTIONS FOR ADJUSTING CERTAIN BENE-**  
 15 **FITS OF DEFINED BENEFIT PLANS FOR**  
 16 **EARLY RETIREES.**

17 (a) IN GENERAL.—Subparagraph (E) of section  
 18 415(b)(2) (relating to limitation on certain assumptions)  
 19 is amended—

20 (1) by striking “Except as provided in clause  
 21 (ii), for purposes of adjusting any benefit or limita-  
 22 tion under subparagraph (B) or (C),” in clause (i)  
 23 and inserting “For purposes of adjusting any limita-  
 24 tion under subparagraph (C) and, except as provided

1 in clause (ii), for purposes of adjusting any benefit  
 2 under subparagraph (B),”, and

3 (2) by striking “For purposes of adjusting the  
 4 benefit or limitation of any form of benefit subject  
 5 to section 417(e)(3),” in clause (ii) and inserting  
 6 “For purposes of adjusting any benefit under sub-  
 7 paragraph (B) for any form of benefit subject to sec-  
 8 tion 417(e)(3),”.

9 (b) EFFECTIVE DATE.—The amendments made by  
 10 this section shall take effect as if included in the provisions  
 11 of section 767 of the Uruguay Round Agreements Act.

12 **SEC. 1204. TREATMENT OF DEFERRED COMPENSATION**  
 13 **PLANS OF STATE AND LOCAL GOVERNMENTS**  
 14 **AND TAX-EXEMPT ORGANIZATIONS.**

15 (a) SPECIAL RULES FOR PLAN DISTRIBUTIONS.—  
 16 Paragraph (9) of section 457(e) (relating to other defini-  
 17 tions and special rules) is amended to read as follows:

18 “(9) BENEFITS NOT TREATED AS MADE AVAIL-  
 19 ABLE BY REASON OF CERTAIN ELECTIONS, ETC.—

20 “(A) TOTAL AMOUNT PAYABLE IS \$3,500  
 21 OR LESS.—The total amount payable to a par-  
 22 ticipant under the plan shall not be treated as  
 23 made available merely because the participant  
 24 may elect to receive such amount (or the plan



1           may distribute such amount without the partici-  
2           pant's consent) if—

3                   “(i) such amount does not exceed  
4                   \$3,500, and

5                   “(ii) such amount may be distributed  
6                   only if—

7                           “(I) no amount has been deferred  
8                           under the plan with respect to such  
9                           participant during the 2-year period  
10                          ending on the date of the distribution,  
11                          and

12                           “(II) there has been no prior dis-  
13                           tribution under the plan to such par-  
14                           ticipant to which this subparagraph  
15                           applied.

16           A plan shall not be treated as failing to meet  
17           the distribution requirements of subsection (d)  
18           by reason of a distribution to which this sub-  
19           paragraph applies.

20                   “(B) ELECTION TO DEFER COMMENCE-  
21                   MENT OF DISTRIBUTIONS.—The total amount  
22                   payable to a participant under the plan shall  
23                   not be treated as made available merely because  
24                   the participant may elect to defer commence-  
25                   ment of distributions under the plan if—

1                   “(i) such election is made after  
 2                   amounts may be available under the plan  
 3                   in accordance with subsection (d)(1)(A)  
 4                   and before commencement of such dis-  
 5                   tributions, and

6                   “(ii) the participant may make only 1  
 7                   such election.”

8           (b) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DE-  
 9 FERRAL AMOUNT.—Subsection (e) of section 457, as  
 10 amended by section 1201(b)(2) (relating to governmental  
 11 plans), is amended by adding at the end the following new  
 12 paragraph:

13                   “(15) COST-OF-LIVING ADJUSTMENT OF MAXI-  
 14 MUM DEFERRAL AMOUNT.—The Secretary shall ad-  
 15 just the \$7,500 amount specified in subsections  
 16 (b)(2) and (c)(1) at the same time and in the same  
 17 manner as under section 415(d), except that the  
 18 base period shall be the calendar quarter ending  
 19 September 30, 1994, and any increase under this  
 20 paragraph which is not a multiple of \$500 shall be  
 21 rounded to the next lowest multiple of \$500.”

22           (c) EFFECTIVE DATE.—The amendments made by  
 23 this section shall apply to taxable years beginning after  
 24 December 31, 1996.

1 **SEC. 1205. NO REQUIRED DISTRIBUTIONS FOR ACTIVE EM-**  
 2 **PLOYEES.**

3 (a) IN GENERAL.—Section 401(a)(9)(C) (defining re-  
 4 quired beginning date) is amended to read as follows:

5 “(C) REQUIRED BEGINNING DATE.—For  
 6 purposes of this paragraph—

7 “(i) IN GENERAL.—The term ‘re-  
 8 quired beginning date’ means April 1 of  
 9 the calendar year following the later of—

10 “(I) the calendar year in which  
 11 the employee attains age 70½, or

12 “(II) the calendar year in which  
 13 the employee retires.

14 “(ii) EXCEPTION.—Subclause (II) of  
 15 clause (i) shall not apply—

16 “(I) except as provided in section  
 17 409(d), in the case of an employee  
 18 who is a 5-percent owner (as defined  
 19 in section 416) with respect to the  
 20 plan year ending in the calendar year  
 21 in which the employee attains age  
 22 70½, or

23 “(II) for purposes of section 408  
 24 (a)(6) or (b)(3).

25 “(iii) ACTUARIAL ADJUSTMENT.—In  
 26 the case of an employee to whom clause

(i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

“(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term ‘church plan’ means a plan maintained by a church for church employees, and the term ‘church’ means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1996.

1 **SEC. 1206. SIMPLIFIED METHOD FOR TAXING ANNUITY DIS-**  
 2 **TRIBUTIONS UNDER CERTAIN EMPLOYER**  
 3 **PLANS.**

4 (a) GENERAL RULE.—Subsection (d) of section 72  
 5 (relating to annuities; certain proceeds of endowment and  
 6 life insurance contracts) is amended to read as follows:

7 “(d) SPECIAL RULES FOR QUALIFIED EMPLOYER  
 8 RETIREMENT PLANS.—

9 “(1) SIMPLIFIED METHOD OF TAXING ANNUITY  
 10 PAYMENTS.—

11 “(A) IN GENERAL.—In the case of any  
 12 amount received as an annuity under a quali-  
 13 fied employer retirement plan—

14 “(i) subsection (b) shall not apply,  
 15 and

16 “(ii) the investment in the contract  
 17 shall be recovered as provided in this para-  
 18 graph.

19 “(B) METHOD OF RECOVERING INVEST-  
 20 MENT IN CONTRACT.—

21 “(i) IN GENERAL.—Gross income  
 22 shall not include so much of any monthly  
 23 annuity payment under a qualified em-  
 24 ployer retirement plan as does not exceed  
 25 the amount obtained by dividing—

1 “(I) the investment in the con-  
 2 tract (as of the annuity starting date),  
 3 by

4 “(II) the number of anticipated  
 5 payments determined under the table  
 6 contained in clause (iii) (or, in the  
 7 case of a contract to which subsection  
 8 (c)(3)(B) applies, the number of  
 9 monthly annuity payments under such  
 10 contract).

11 “(ii) CERTAIN RULES MADE APPLICA-  
 12 BLE.—Rules similar to the rules of para-  
 13 graphs (2) and (3) of subsection (b) shall  
 14 apply for purposes of this paragraph.

15 “(iii) NUMBER OF ANTICIPATED PAY-  
 16 MENTS.—

<b>“If the age of the primary annuitant on the annuity starting date is:</b>	<b>The number of anticipated payments is:</b>
Not more than 55 .....	360
More than 55 but not more than 60 ...	310
More than 60 but not more than 65 ...	260
More than 65 but not more than 70 ...	210
More than 70 .....	160.

17 “(C) ADJUSTMENT FOR REFUND FEATURE  
 18 NOT APPLICABLE.—For purposes of this para-  
 19 graph, investment in the contract shall be de-

1           terminated under subsection (c)(1) without re-  
2           gard to subsection (c)(2).

3           “(D) SPECIAL RULE WHERE LUMP SUM  
4           PAID IN CONNECTION WITH COMMENCEMENT  
5           OF ANNUITY PAYMENTS.—If, in connection with  
6           the commencement of annuity payments under  
7           any qualified employer retirement plan, the tax-  
8           payer receives a lump sum payment—

9                   “(i) such payment shall be taxable  
10                  under subsection (e) as if received before  
11                  the annuity starting date, and

12                  “(ii) the investment in the contract  
13                  for purposes of this paragraph shall be de-  
14                  termined as if such payment had been so  
15                  received.

16           “(E) EXCEPTION.—This paragraph shall  
17           not apply in any case where the primary annu-  
18           itant has attained age 75 on the annuity start-  
19           ing date unless there are fewer than 5 years of  
20           guaranteed payments under the annuity.

21           “(F) ADJUSTMENT WHERE ANNUITY PAY-  
22           MENTS NOT ON MONTHLY BASIS.—In any case  
23           where the annuity payments are not made on a  
24           monthly basis, appropriate adjustments in the  
25           application of this paragraph shall be made to

1 take into account the period on the basis of  
 2 which such payments are made.

3 “(G) QUALIFIED EMPLOYER RETIREMENT  
 4 PLAN.—For purposes of this paragraph, the  
 5 term ‘qualified employer retirement plan’ means  
 6 any plan or contract described in paragraph  
 7 (1), (2), or (3) of section 4974(c).

8 “(2) TREATMENT OF EMPLOYEE CONTRIBU-  
 9 TIONS UNDER DEFINED CONTRIBUTION PLANS.—  
 10 For purposes of this section, employee contributions  
 11 (and any income allocable thereto) under a defined  
 12 contribution plan may be treated as a separate con-  
 13 tract.”

14 (b) EFFECTIVE DATE.—The amendment made by  
 15 this section shall apply in cases where the annuity starting  
 16 date is after December 31, 1996.

17 **SEC. 1207. REPEAL OF 5-YEAR INCOME AVERAGING FOR**  
 18 **LUMP-SUM DISTRIBUTIONS.**

19 (a) IN GENERAL.—Subsection (d) of section 402 (re-  
 20 lating to taxability of beneficiary of employees’ trust) is  
 21 amended to read as follows:

22 “(d) TAXABILITY OF BENEFICIARY OF CERTAIN  
 23 FOREIGN SITUS TRUSTS.—For purposes of subsections  
 24 (a), (b), and (c), a stock bonus, pension, or profit-sharing  
 25 trust which would qualify for exemption from tax under



1 section 501(a) except for the fact that it is a trust created  
 2 or organized outside the United States shall be treated  
 3 as if it were a trust exempt from tax under section  
 4 501(a).”

5 (b) CONFORMING AMENDMENTS.—

6 (1) Subparagraph (D) of section 402(e)(4) (re-  
 7 lating to other rules applicable to exempt trusts) is  
 8 amended to read as follows:

9 “(D) LUMP-SUM DISTRIBUTION.—For pur-  
 10 poses of this paragraph—

11 “(i) IN GENERAL.—The term ‘lump  
 12 sum distribution’ means the distribution or  
 13 payment within one taxable year of the re-  
 14 cipient of the balance to the credit of an  
 15 employee which becomes payable to the re-  
 16 cipient—

17 “(I) on account of the employee’s  
 18 death,

19 “(II) after the employee attains  
 20 age 59½,

21 “(III) on account of the employ-  
 22 ee’s separation from service, or

23 “(IV) after the employee has be-  
 24 come disabled (within the meaning of  
 25 section 72(m)(7)),

1 from a trust which forms a part of a plan  
 2 described in section 401(a) and which is  
 3 exempt from tax under section 501 or from  
 4 a plan described in section 403(a). Sub-  
 5 clause (III) of this clause shall be applied  
 6 only with respect to an individual who is  
 7 an employee without regard to section  
 8 401(c)(1), and subclause (IV) shall be ap-  
 9 plied only with respect to an employee  
 10 within the meaning of section 401(c)(1).  
 11 For purposes of this clause, a distribution  
 12 to two or more trusts shall be treated as  
 13 a distribution to one recipient. For pur-  
 14 poses of this paragraph, the balance to the  
 15 credit of the employee does not include the  
 16 accumulated deductible employee contribu-  
 17 tions under the plan (within the meaning  
 18 of section 72(o)(5)).

19 “(ii) AGGREGATION OF CERTAIN  
 20 TRUSTS AND PLANS.—For purposes of de-  
 21 termining the balance to the credit of an  
 22 employee under clause (i)—

23 “(I) all trusts which are part of  
 24 a plan shall be treated as a single  
 25 trust, all pension plans maintained by

1 the employer shall be treated as a sin-  
 2 gle plan, all profit-sharing plans main-  
 3 tained by the employer shall be treat-  
 4 ed as a single plan, and all stock  
 5 bonus plans maintained by the em-  
 6 ployer shall be treated as a single  
 7 plan, and

8 “(II) trusts which are not quali-  
 9 fied trusts under section 401(a) and  
 10 annuity contracts which do not satisfy  
 11 the requirements of section 404(a)(2)  
 12 shall not be taken into account.

13 “(iii) COMMUNITY PROPERTY LAWS.—  
 14 The provisions of this paragraph shall be  
 15 applied without regard to community prop-  
 16 erty laws.

17 “(iv) AMOUNTS SUBJECT TO PEN-  
 18 ALTY.—This paragraph shall not apply to  
 19 amounts described in subparagraph (A) of  
 20 section 72(m)(5) to the extent that section  
 21 72(m)(5) applies to such amounts.

22 “(v) BALANCE TO CREDIT OF EM-  
 23 PLOYEE NOT TO INCLUDE AMOUNTS PAY-  
 24 ABLE UNDER QUALIFIED DOMESTIC RELA-  
 25 TIONS ORDER.—For purposes of this para-

graph, the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

“(vi) TRANSFERS TO COST-OF-LIVING ARRANGEMENT NOT TREATED AS DISTRIBUTION.—For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.

“(vii) LUMP-SUM DISTRIBUTIONS OF ALTERNATE PAYEES.—If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee

1           shall be treated as a lump-sum distribu-  
 2           tion. For purposes of this clause, the bal-  
 3           ance to the credit of the alternate payee  
 4           shall not include any amount payable to  
 5           the employee.”

6           (2) Section 402(c) (relating to rules applicable  
 7           to rollovers from exempt trusts) is amended by strik-  
 8           ing paragraph (10).

9           (3) Paragraph (1) of section 55(c) (defining  
 10          regular tax) is amended by striking “shall not in-  
 11          clude any tax imposed by section 402(d) and”.

12          (4) Paragraph (8) of section 62(a) (relating to  
 13          certain portion of lump-sum distributions from pen-  
 14          sion plans taxed under section 402(d)) is hereby re-  
 15          pealed.

16          (5) Section 401(a)(28)(B) (relating to coordina-  
 17          tion with distribution rules) is amended by striking  
 18          clause (v).

19          (6) Subparagraph (B)(ii) of section 401(k)(10)  
 20          (relating to distributions that must be lump-sum dis-  
 21          tributions) is amended to read as follows:

22                 “(ii) LUMP-SUM DISTRIBUTION.—For  
 23                 purposes of this subparagraph, the term  
 24                 ‘lump-sum distribution’ has the meaning  
 25                 given such term by section 402(e)(4)(D),

1                   without regard to subclauses (I), (II),  
2                   (III), and (IV) of clause (i) thereof.”

3           (7) Section 406(c) (relating to termination of  
4           status as deemed employee not to be treated as sep-  
5           aration from service for purposes of limitation of  
6           tax) is hereby repealed.

7           (8) Section 407(c) (relating to termination of  
8           status as deemed employee not to be treated as sep-  
9           aration from service for purposes of limitation of  
10          tax) is hereby repealed.

11          (9) Section 691(c) (relating to deduction for es-  
12          tate tax) is amended by striking paragraph (5).

13          (10) Paragraph (1) of section 871(b) (relating  
14          to imposition of tax) is amended by striking “section  
15          1, 55, or 402(d)(1)” and inserting “section 1 or  
16          55”.

17          (11) Subsection (b) of section 877 (relating to  
18          alternative tax) is amended by striking “section 1,  
19          55, or 402(d)(1)” and inserting “section 1 or 55”.

20          (12) Section 4980A(c)(4) is amended—

21                (A) by striking “to which an election under  
22                section 402(d)(4)(B) applies” and inserting  
23                “(as defined in section 402(e)(4)(D)) with re-  
24                spect to which the individual elects to have this  
25                paragraph apply”,

1 (B) by adding at the end the following new  
2 flush sentence:

3 “An individual may elect to have this paragraph  
4 apply to only one lump-sum distribution.”, and

5 (C) by striking the heading and inserting:  
6 “(4) SPECIAL ONE-TIME ELECTION.—”.

7 (13) Section 402(e) is amended by striking  
8 paragraph (5).

9 (c) EFFECTIVE DATES.—

10 (1) IN GENERAL.—The amendments made by  
11 this section shall apply to taxable years beginning  
12 after December 31, 1998.

13 (2) RETENTION OF CERTAIN TRANSITION  
14 RULES.—Notwithstanding any other provision of  
15 this section, the amendments made by this section  
16 shall not apply to any distribution for which the tax-  
17 payer elects the benefits of section 1122 (h)(3) or  
18 (h)(5) of the Tax Reform Act of 1986. For purposes  
19 of the preceding sentence, the rules of sections  
20 402(c)(10) and 402(d) of the Internal Revenue Code  
21 of 1986 (as in effect before the amendments made  
22 by this Act) shall apply.

1 **SEC. 1208. ELIMINATION OF HALF-YEAR REQUIREMENTS.**

2 (a) IN GENERAL.—Each of the following provisions  
3 are amended by striking “age 59½” and inserting “age  
4 59”:

- 5 (1) Section 72(q)(2)(A).
- 6 (2) Section 72(q)(3)(B)(i).
- 7 (3) Section 72(q)(3)(B)(ii).
- 8 (4) Section 72(t)(2)(A)(i).
- 9 (5) Section 72(t)(4)(A)(ii)(I).
- 10 (6) Section 72(t)(4)(A)(ii)(II).
- 11 (7) Section 72(v)(2)(A).
- 12 (8) Section 401(k)(2)(B)(i)(III).
- 13 (9) Section 403(b)(7)(A)(ii).
- 14 (10) Section 403(b)(11)(A).
- 15 (11) The heading for section 403(b)(11).
- 16 (12) Section 4978(d)(1)(B).

17 (b) OTHER PROVISIONS.—Each of the following pro-  
18 visions are amended by striking “age 70½” each place  
19 it appears and inserting “age 70”:

- 20 (1) Section 219(d)(1).
- 21 (2) The heading for section 219(d)(1).
- 22 (3) Section 401(a)(9)(B)(iv)(I).
- 23 (4) Section 401(a)(9)(C).
- 24 (5) Section 408(b).
- 25 (6) Section 457(d)(1)(A).



1 (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to years beginning after December  
 3 31, 1996.

4 **SEC. 1209. DISTRIBUTIONS UNDER RURAL COOPERATIVE**  
 5 **PLANS.**

6 (a) DISTRIBUTIONS FOR HARDSHIP OR AFTER A  
 7 CERTAIN AGE.—Section 401(k)(7) is amended by adding  
 8 at the end the following new subparagraph:

9 “(C) SPECIAL RULE FOR CERTAIN DIS-  
 10 TRIBUTIONS.—A rural cooperative plan which  
 11 includes a qualified cash or deferred arrange-  
 12 ment shall not be treated as violating the re-  
 13 quirements of section 401(a) or of paragraph  
 14 (2) merely because, under the plan, distribu-  
 15 tions may be made by reason of hardship or the  
 16 attainment of age 59½. For purposes of this  
 17 section, the term ‘hardship distribution’ means  
 18 a distribution described in paragraph  
 19 (2)(B)(i)(IV) (without regard to the limitation  
 20 of its application to profit-sharing or stock  
 21 bonus plans).”

22 (b) EFFECTIVE DATE.—The amendment made by  
 23 subsection (a) shall apply to distributions after the date  
 24 of the enactment of this Act.

1 **SEC. 1210. MODIFICATION OF ADDITIONAL PARTICIPATION**  
2 **REQUIREMENTS.**

3 (a) GENERAL RULE.—Section 401(a)(26)(A) (relat-  
4 ing to additional participation requirements) is amended  
5 to read as follows:

6 “(A) IN GENERAL.—In the case of a trust  
7 which is a part of a defined benefit plan, such  
8 trust shall not constitute a qualified trust under  
9 this subsection unless, on each day of the plan  
10 year, such plan benefits at least the lesser of—

11 “(i) 50 employees of the employer, or

12 “(ii) the greater of—

13 “(I) 40 percent of all employees  
14 of the employer, or

15 “(II) 2 employees (or if there is  
16 only 1 employee, such employee).”

17 (b) EFFECTIVE DATE.—The amendment made by  
18 this section shall apply to plan years beginning after De-  
19 cember 31, 1996.

20 **SEC. 1211. UNIFORM RETIREMENT AGE.**

21 (a) DISCRIMINATION TESTING.—Paragraph (5) of  
22 section 401(a) (relating to special rules relating to non-  
23 discrimination requirements) is amended by adding at the  
24 end the following new subparagraph:

1                   “(F) SOCIAL SECURITY RETIREMENT  
2                   AGE.—For purposes of testing for discrimina-  
3                   tion under paragraph (4)—

4                   “(i) the social security retirement age  
5                   (as defined in section 415(b)(8)) shall be  
6                   treated as a uniform retirement age, and

7                   “(ii) subsidized early retirement bene-  
8                   fits and joint and survivor annuities shall  
9                   not be treated as being unavailable to em-  
10                  ployees on the same terms merely because  
11                  such benefits or annuities are based in  
12                  whole or in part on an employee’s social  
13                  security retirement age (as so defined).”

14           (b) EFFECTIVE DATE.—The amendment made by  
15 this section shall apply to plan years beginning after De-  
16 cember 31, 1996.

17 **SEC. 1212. TREATMENT OF LEASED EMPLOYEES.**

18           (a) GENERAL RULE.—Subparagraph (C) of section  
19 414(n)(2) (defining leased employee) is amended to read  
20 as follows:

21                   “(C) such services are performed under  
22                   significant direction or control by the recipi-  
23                   ent.”

24           (b) EFFECTIVE DATE.—The amendment made by  
25 subsection (a) shall apply to years beginning after Decem-

ber 31, 1996, but shall not apply to any relationship determined under an Internal Revenue Service ruling issued before the date of the enactment of this Act pursuant to section 414(n)(2)(C) of the Internal Revenue Code of 1986 (as in effect on the day before such date) not to involve a leased employee.

**SEC. 1213. FULL FUNDING LIMITATION FOR MULTIEMPLOYER PLANS.**

(a) FULL-FUNDING LIMITATION.—Section 412(c)(7)(C) (relating to full-funding limitation) is amended—

(1) by inserting “or in the case of a multiemployer plan,” after “paragraph (6)(B),” and

(2) by inserting “AND MULTIEMPLOYER PLANS” after “PARAGRAPH (6)(B)” in the heading thereof.

(b) VALUATION.—Section 412(c)(9) is amended—

(1) by inserting “(3 years in the case of a multiemployer plan)” after “year”, and

(2) by striking “ANNUAL VALUATION” in the heading and inserting “VALUATION”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1996.

1 **SEC. 1214. ELIMINATION OF PARTIAL TERMINATION RULES**  
 2 **FOR MULTIEMPLOYER PLANS.**

3 (a) PARTIAL TERMINATION RULES FOR MULTIEM-  
 4 PLOYER PLANS.—Section 411(d)(3) is amended by adding  
 5 at the end the following new sentence: “This paragraph  
 6 shall not apply in the case of a partial termination of a  
 7 multiemployer plan.”

8 (b) EFFECTIVE DATE.—The amendment made by  
 9 this section shall apply to partial terminations beginning  
 10 after December 31, 1996.

11 **SEC. 1215. ELECTIVE DEFERRALS UNDER SECTION 403(b).**

12 (a) IN GENERAL.—Subparagraph (E) of section  
 13 403(b)(1) is amended to read as follows:

14 “(E) in the case of a contract purchased  
 15 under a salary reduction agreement, the con-  
 16 tract meets the requirements of section  
 17 401(a)(30),”.

18 (b) EFFECTIVE DATE.—The amendment made by  
 19 this section shall apply to years beginning after December  
 20 31, 1996.

21 **SEC. 1216. UNIFORM PENALTY PROVISIONS TO APPLY TO**  
 22 **CERTAIN PENSION REPORTING REQUIRE-**  
 23 **MENTS.**

24 (a) PENALTIES.—

25 (1) STATEMENTS.—Paragraph (1) of section  
 26 6724(d) is amended by striking “and” at the end of

1        subparagraph (A), by striking the period at the end  
 2        of subparagraph (B) and inserting “, and”, and by  
 3        inserting after subparagraph (B) the following new  
 4        subparagraph:

5                “(C) any statement required to be made to  
 6        the Secretary under—

7                        “(i) section 408(i) (relating to reports  
 8                        with respect to individual retirement ac-  
 9                        counts or annuities), or

10                      “(ii) section 6047(d) (relating to re-  
 11                      ports by employers, plan administrators,  
 12                      etc.).”

13                (2) REPORTS.—Paragraph (2) of section  
 14        6724(d) is amended by striking “or” at the end of  
 15        subparagraph (S), by striking the period at the end  
 16        of subparagraph (T) and inserting a comma, and by  
 17        inserting after subparagraph (T) the following new  
 18        subparagraphs:

19                      “(U) section 408(i) (relating to reports  
 20                      with respect to individual retirement plans) to  
 21                      any person other than the Secretary, or

22                      “(V) section 6047(d) (relating to reports  
 23                      by plan administrators) to any person other  
 24                      than the Secretary.”

25                (3) PENALTIES.—

1 (A) Section 6721(e)(2)(A) is amended by  
 2 striking “or 6050L” and inserting “6050L, or  
 3 408(i)”.

4 (B) Section 6722(c)(1)(A) is amended by  
 5 striking “or 6050L(c)” and inserting  
 6 “6050L(c), or 408(i)”.

7 (b) MODIFICATION OF REPORTABLE DESIGNATED  
 8 DISTRIBUTIONS.—

9 (1) SECTION 408.—Subsection (i) of section 408  
 10 (relating to individual retirement account reports) is  
 11 amended by inserting “aggregating \$10 or more in  
 12 any calendar year” after “distributions”.

13 (2) SECTION 6047.—Paragraph (1) of section  
 14 6047(d) (relating to reports by employers, plan ad-  
 15 ministrators, etc.) is amended by adding at the end  
 16 the following new sentence: “No return or report  
 17 may be required under the preceding sentence with  
 18 respect to distributions to any person during any  
 19 year unless such distributions aggregate \$10 or  
 20 more.”

21 (c) CONFORMING AMENDMENTS.—

1           (1) Paragraph (1) of section 6047(f) is amend-  
2           ed to read as follows:

**“(1) For provisions relating to penalties for failures to file returns and reports required under this section, see sections 6652(e), 6721, and 6722.”**

3           (2) Subsection (e) of section 6652 is amended  
4           by adding at the end the following new sentence:  
5           “‘This subsection shall not apply to any return or  
6           statement which is an information return described  
7           in section 6724(d)(1)(C)(ii) or a payee statement de-  
8           scribed in section 6724(d)(2)(V).’”

9           (3) Subsection (a) of section 6693 is amended  
10          by adding at the end the following new sentence:  
11          “‘This subsection shall not apply to any report which  
12          is an information return described in section  
13          6724(d)(1)(C)(i) or a payee statement described in  
14          section 6724(d)(2)(U).’”

15          (d) EFFECTIVE DATE.—The amendments made by  
16          this section shall apply to returns, reports, and other  
17          statements the due date for which (determined without re-  
18          gard to extensions) is after December 31, 1996.

19          **SEC. 1217. TAX ON PROHIBITED TRANSACTIONS.**

20          (a) IN GENERAL.—Section 4975(a) is amended by  
21          striking “5 percent” and inserting “10 percent”.

22          (b) EFFECTIVE DATE.—The amendment made by  
23          this section shall apply to prohibited transactions occur-  
24          ring after the date of the enactment of this Act.



1 **SEC. 1218. DATE FOR ADOPTION OF PLAN AMENDMENTS.**

2 (a) IN GENERAL.—If any amendment made by this  
3 subtitle requires an amendment to any plan, such plan  
4 amendment shall not be required to be made before the  
5 last day of the first plan year beginning on or after Janu-  
6 ary 1, 1998, if—

7 (1) during the period after such amendment  
8 takes effect and before the last day of such first  
9 plan year, the plan is operated in accordance with  
10 the requirements of such amendment, and

11 (2) such plan amendment applies retroactively  
12 to such period.

13 (b) GOVERNMENTAL PLANS.—In the case of a gov-  
14 ernmental plan (as defined in section 414(d) of the Inter-  
15 nal Revenue Code of 1986), subsection (a) shall be applied  
16 by substituting for “January 1, 1998” the later of—

17 (1) January 1, 1999, or

18 (2) the date which is 90 days after the opening  
19 of the first legislative session beginning after Janu-  
20 ary 1, 1999, of the governing body with authority to  
21 amend the plan, but only if such governing body  
22 does not meet continuously.

1 **Subtitle B—Expanded Individual**  
 2 **Retirement Accounts to In-**  
 3 **crease Coverage and Portability**

4 **CHAPTER 1—RETIREMENT SAVINGS**  
 5 **INCENTIVES**

6 **Subchapter A—IRA Deduction**

7 **SEC. 1301. INCREASE IN INCOME LIMITATIONS.**

8 (a) IN GENERAL.—Subparagraph (B) of section  
 9 219(g)(3) is amended—

10 (1) by striking “\$40,000” in clause (i) and in-  
 11 serting “\$80,000 (\$70,000 in the case of taxable  
 12 years beginning in 1996, 1997, or 1998)”, and

13 (2) by striking “\$25,000” in clause (ii) and in-  
 14 serting “\$50,000 (\$45,000 in the case of taxable  
 15 years beginning in 1996, 1997, or 1998)”.

16 (b) PHASEOUT OF LIMITATIONS.—Clause (ii) of sec-  
 17 tion 219(g)(2)(A) is amended by striking “\$10,000” and  
 18 inserting “an amount equal to 10 times the dollar amount  
 19 applicable for the taxable year under subsection  
 20 (b)(1)(A)”.

21 (c) EFFECTIVE DATE.—The amendments made by  
 22 this section shall apply to taxable years beginning after  
 23 December 31, 1995.

1 **SEC. 1302. INFLATION ADJUSTMENT FOR DEDUCTIBLE**  
 2 **AMOUNT AND INCOME LIMITATIONS.**

3 (a) IN GENERAL.—Section 219 is amended by redес-  
 4 ignating subsection (h) as subsection (i) and by inserting  
 5 after subsection (g) the following new subsection:

6 “(h) COST-OF-LIVING ADJUSTMENTS.—

7 “(1) DEDUCTIBLE AMOUNTS.—In the case of  
 8 any taxable year beginning in a calendar year after  
 9 1996, the \$2,000 amounts under subsections  
 10 (b)(1)(A) and (c)(2) shall be increased by an amount  
 11 equal to—

12 “(A) such dollar amount, multiplied by

13 “(B) the cost-of-living adjustment deter-  
 14 mined under section 1(f)(3) for the calendar  
 15 year in which the taxable year begins, deter-  
 16 mined by substituting ‘calendar year 1995’ for  
 17 ‘calendar year 1992’ in subparagraph (B)  
 18 thereof.

19 “(2) APPLICABLE DOLLAR AMOUNT.—In the  
 20 case of any taxable year beginning in a calendar  
 21 year after 1999, the applicable dollar amounts under  
 22 subsection (g)(3)(B) shall be increased by an  
 23 amount equal to—

24 “(A) such dollar amount, multiplied by

25 “(B) the cost-of-living adjustment deter-  
 26 mined under section 1(f)(3) for the calendar

year in which the taxable year begins, determined by substituting ‘calendar year 1998’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(3) ROUNDING RULES.—

“(A) DEDUCTION AMOUNTS.—If any amount after adjustment under paragraph (1) is not a multiple of \$500, such amount shall be rounded to the next lowest multiple of \$500.

“(B) APPLICABLE DOLLAR AMOUNTS.—If any amount after adjustment under paragraph (2) is not a multiple of \$5,000, such amount shall be rounded to the next lowest multiple of \$5,000.”

(b) CONFORMING AMENDMENTS.—

(1) Clause (i) of section 219(c)(2)(A) is amended to read as follows:

“(i) the sum of \$250 and the dollar amount in effect for the taxable year under subsection (b)(1)(A), or”.

(2) Section 408(a)(1) is amended by striking “in excess of \$2,000 on behalf of any individual” and inserting “on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)”.

8           (5) Section 408(j) is amended by striking  
9           “\$2,000”.

13 SEC. 1303. COORDINATION OF IRA DEDUCTION LIMIT WITH  
14 ELECTIVE DEFERRAL LIMIT.

“(4) COORDINATION WITH ELECTIVE DEFER-  
RAL LIMIT.—The amount determined under para-  
graph (1) or subsection (c)(2) with respect to any  
individual for any taxable year shall not exceed the  
excess (if any) of—

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1 “(B) the elective deferrals (as defined in  
 2 section 402(g)(3)) of such individual for such  
 3 taxable year.”

4 (b) CONFORMING AMENDMENT.—Section 219(c) is  
 5 amended by adding at the end the following new para-  
 6 graph:

7 “(3) CROSS REFERENCE.—

**“For reduction in paragraph (2) amount, see sub-  
 section (b)(4).”**

8 (c) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply to taxable years beginning after  
 10 December 31, 1995.

## 11 **Subchapter B—Nondeductible Tax-Free IRAs**

### 12 **SEC. 1311. ESTABLISHMENT OF NONDEDUCTIBLE TAX-FREE** 13 **INDIVIDUAL RETIREMENT ACCOUNTS.**

14 (a) IN GENERAL.—Subpart A of part I of subchapter  
 15 D of chapter 1 (relating to pension, profit-sharing, stock  
 16 bonus plans, etc.) is amended by inserting after section  
 17 408 the following new section:

#### 18 **“SEC. 408A. SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.**

19 “(a) GENERAL RULE.—Except as provided in this  
 20 chapter, a special individual retirement account shall be  
 21 treated for purposes of this title in the same manner as  
 22 an individual retirement plan.

23 “(b) SPECIAL INDIVIDUAL RETIREMENT AC-  
 24 COUNT.—For purposes of this title, the term ‘special indi-

1 vidual retirement account’ means an individual retirement  
 2 plan which is designated at the time of establishment of  
 3 the plan as a special individual retirement account.

4 “(c) TREATMENT OF CONTRIBUTIONS.—

5 “(1) NO DEDUCTION ALLOWED.—No deduction  
 6 shall be allowed under section 219 for a contribution  
 7 to a special individual retirement account.

8 “(2) CONTRIBUTION LIMIT.—The aggregate  
 9 amount of contributions for any taxable year to all  
 10 special individual retirement accounts maintained for  
 11 the benefit of an individual shall not exceed the ex-  
 12 cess (if any) of—

13 “(A) the maximum amount allowable as a  
 14 deduction under section 219 with respect to  
 15 such individual for such taxable year, over

16 “(B) the aggregate amount of contribu-  
 17 tions for such taxable year to all individual re-  
 18 tirement plans (other than special individual re-  
 19 tirement accounts) maintained for the benefit of  
 20 the individual.

21 “(3) SPECIAL RULES FOR QUALIFIED TRANS-  
 22 FERS.—

23 “(A) IN GENERAL.—No rollover contribu-  
 24 tion may be made to a special individual retire-  
 25 ment account unless it is a qualified transfer.

1           “(B) LIMIT NOT TO APPLY.—The limita-  
 2           tion under paragraph (2) shall not apply to a  
 3           qualified transfer to a special individual retire-  
 4           ment account.

5           “(d) TAX TREATMENT OF DISTRIBUTIONS.—

6           “(1) IN GENERAL.—Except as provided in this  
 7           subsection, any amount paid or distributed out of a  
 8           special individual retirement account shall not be in-  
 9           cluded in the gross income of the distributee.

10          “(2) EXCEPTION FOR EARNINGS ON CONTRIBU-  
 11          TIONS HELD LESS THAN 5 YEARS.—

12          “(A) IN GENERAL.—Any amount distrib-  
 13          uted out of a special individual retirement ac-  
 14          count which consists of earnings allocable to  
 15          contributions made to the account during the 5-  
 16          year period ending on the day before such dis-  
 17          tribution shall be included in the gross income  
 18          of the distributee for the taxable year in which  
 19          the distribution occurs.

20          “(B) ORDERING RULE.—

21          “(i) FIRST-IN, FIRST-OUT RULE.—  
 22          Distributions from a special individual re-  
 23          tirement account shall be treated as having  
 24          been made—



1                   “(I) first from the earliest con-  
 2                   tribution (and earnings allocable  
 3                   thereto) remaining in the account at  
 4                   the time of the distribution, and

5                   “(II) then from other contribu-  
 6                   tions (and earnings allocable thereto)  
 7                   in the order in which made.

8                   “(ii) ALLOCATIONS BETWEEN CON-  
 9                   TRIBUTIONS AND EARNINGS.—Any portion  
 10                  of a distribution allocated to a contribution  
 11                  (and earnings allocable thereto) shall be  
 12                  treated as allocated first to the earnings  
 13                  and then to the contribution.

14                  “(iii) ALLOCATION OF EARNINGS.—  
 15                  Earnings shall be allocated to a contribu-  
 16                  tion in such manner as the Secretary may  
 17                  prescribe.

18                  “(iv) AGGREGATIONS OF CONTRIBU-  
 19                  TIONS.—Except as provided by the Sec-  
 20                  retary, for purposes of this subpara-  
 21                  graph—

22                         “(I) all contributions made dur-  
 23                         ing the same taxable year may be  
 24                         treated as 1 contribution, and

1 “(II) all contributions made be-  
 2 fore the first day of the 5-year period  
 3 ending on the day before any distribu-  
 4 tion may be treated as 1 contribution.

5 “(C) CROSS REFERENCE.—

“For additional tax for early withdrawal, see sec-  
 tion 72(t).

6 “(3) QUALIFIED TRANSFER.—

7 “(A) IN GENERAL.—Paragraph (2) shall  
 8 not apply to any distribution which is trans-  
 9 ferred in a qualified transfer to another special  
 10 individual retirement account.

11 “(B) CONTRIBUTION PERIOD.—For pur-  
 12 poses of paragraph (2), the special individual  
 13 retirement account to which any contributions  
 14 are transferred shall be treated as having held  
 15 such contributions during any period such con-  
 16 tributions were held (or are treated as held  
 17 under this subparagraph) by the special individ-  
 18 ual retirement account from which transferred.

19 “(4) SPECIAL RULES RELATING TO CERTAIN  
 20 TRANSFERS.—

21 “(A) IN GENERAL.—Notwithstanding any  
 22 other provision of law, in the case of a qualified  
 23 transfer to a special individual retirement ac-

1 count from an individual retirement plan which  
2 is not a special individual retirement account—

3 “(i) there shall be included in gross  
4 income any amount which, but for the  
5 qualified transfer, would be includible in  
6 gross income, but

7 “(ii) section 72(t) shall not apply to  
8 such amount.

9 “(B) TIME FOR INCLUSION.—In the case  
10 of any qualified transfer which occurs before  
11 January 1, 1998, any amount includible in  
12 gross income under subparagraph (A) with re-  
13 spect to such contribution shall be includible  
14 ratably over the 4-taxable year period beginning  
15 in the taxable year in which the amount was  
16 paid or distributed out of the individual retire-  
17 ment plan. The amount of such qualified trans-  
18 fer taken into account for purposes of section  
19 4980A(c) shall be taken into account ratably  
20 over such period.

21 “(C) ADDITIONAL REPORTING.—A trustee  
22 of an individual retirement plan shall include  
23 such additional information in any report re-  
24 quired under section 408(i) as the Secretary  
25 may require to insure that amounts described

1 in subparagraph (B) are included in gross in-  
 2 come for the appropriate taxable year.

3 “(e) QUALIFIED TRANSFER.—For purposes of this  
 4 section—

5 “(1) IN GENERAL.—The term ‘qualified trans-  
 6 fer’ means a transfer to a special individual retire-  
 7 ment account from another such account or from an  
 8 individual retirement plan but only if such transfer  
 9 meets the requirements of section 408(d)(3).

10 “(2) LIMITATION.—

11 “(A) IN GENERAL.—A transfer otherwise  
 12 described in paragraph (1) shall not be treated  
 13 as a qualified transfer if the taxpayer’s adjusted  
 14 gross income for the taxable year of the trans-  
 15 fer exceeds the sum of—

16 “(i) the applicable dollar amount, plus

17 “(ii) the dollar amount applicable for  
 18 the taxable year under section  
 19 219(g)(2)(A)(ii).

20 This subparagraph shall not apply to a transfer  
 21 from a special individual retirement account to  
 22 another special individual retirement account.

23 “(B) TRANSITION RULE.—In the case of a  
 24 transfer before January 1, 1999, the dollar lim-  
 25 itation under subparagraph (A) shall be

1           \$100,000 in the case of a married individual fil-  
 2           ing a joint return, zero in the case of a married  
 3           individual filing a separate return, and \$70,000  
 4           in any other case.

5           “(3) DEFINITIONS.—For purposes of this sub-  
 6           section, the terms ‘adjusted gross income’ and ‘ap-  
 7           plicable dollar amount’ have the meanings given  
 8           such terms by section 219(g)(3), except that ad-  
 9           justed gross income shall be determined by taking  
 10          into account the deduction under section 219 and  
 11          not taking into account any transfer to which para-  
 12          graph (2) applies.”

13          (b) ADDITIONAL TAX ON EARLY DISTRIBUTIONS.—  
 14          Section 72(t) is amended by adding at the end the follow-  
 15          ing new paragraph:

16               “(6) RULES RELATING TO SPECIAL INDIVIDUAL  
 17          RETIREMENT ACCOUNTS.—In the case of a special  
 18          individual retirement account under section 408A—

19                       “(A) this subsection shall only apply to  
 20                       distributions out of such account which consist  
 21                       of earnings allocable to contributions made to  
 22                       the account during the 5-year period ending on  
 23                       the day before such distribution, and

1 “(B) paragraph (2)(A)(i) shall not apply to  
 2 any distribution described in subparagraph  
 3 (A).”

4 (c) EXCESS CONTRIBUTIONS.—Section 4973(b) is  
 5 amended—

6 (1) by inserting “, or a qualified transfer de-  
 7 scribed in section 408A(e)” after “408(d)(3)” in  
 8 paragraph (1)(A), and

9 (2) by adding at the end the following new sen-  
 10 tence: “For purposes of paragraphs (1)(B) and  
 11 (2)(C), the amount allowable as a deduction under  
 12 section 219 shall be computed without regard to sec-  
 13 tion 408A.”

14 (d) REPORTING.—Section 408(i) is amended by strik-  
 15 ing “under regulations” and “in such regulations” each  
 16 place such terms appear.

17 (e) CONFORMING AMENDMENT.—The table of sec-  
 18 tions for subpart A of part I of subchapter D of chapter  
 19 1 is amended by inserting after the item relating to section  
 20 408 the following new item:

“Sec. 408A. Special individual retirement accounts.”

21 (f) EFFECTIVE DATE.—The amendments made by  
 22 this section shall apply to taxable years beginning after  
 23 December 31, 1995.

## CHAPTER 2—DISTRIBUTIONS AND INVESTMENTS

**SEC. 1321. DISTRIBUTIONS FROM IRAS MAY BE USED WITHOUT ADDITIONAL TAX TO PURCHASE FIRST HOMES, TO PAY HIGHER EDUCATION OR FINANCIALLY DEVASTATING MEDICAL EXPENSES, OR BY THE UNEMPLOYED.**

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

“(D) DISTRIBUTIONS FROM CERTAIN PLANS FOR FIRST HOME PURCHASES OR EDUCATIONAL EXPENSES.—Distributions to an individual from an individual retirement plan—

“(i) which are qualified first-time homebuyer distributions (as defined in paragraph (7)); or

“(ii) to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (8)) of the taxpayer for the taxable year.”

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—

1           (1) IN GENERAL.—Section 72(t)(3)(A) is  
2 amended by striking “(B),”.

3           (2) CERTAIN LINEAL DESCENDANTS AND AN-  
4 CESTORS TREATED AS DEPENDENTS AND LONG-  
5 TERM CARE SERVICES TREATED AS MEDICAL  
6 CARE.—Subparagraph (B) of section 72(t)(2) is  
7 amended by striking “medical care” and all that fol-  
8 lows and inserting “medical care determined—

9                   “(i) without regard to whether the  
10 employee itemizes deductions for such tax-  
11 able year, and

12                   “(ii) in the case of an individual re-  
13 tirement plan—

14                   “(I) by treating such employee’s  
15 dependents as including all children,  
16 grandchildren, and ancestors of the  
17 employee or such employee’s spouse  
18 and

19                   “(II) by treating qualified long-  
20 term care services (as defined in para-  
21 graph (9)) as medical care for pur-  
22 poses of this subparagraph.”

23           (3) CONFORMING AMENDMENT.—Subparagraph  
24 (B) of section 72(t)(2) is amended by striking “or  
25 (C)” and inserting “, (C), or (D)”.



1       (c) DEFINITIONS.—Section 72(t), as amended by this  
 2 Act, is amended by adding at the end the following new  
 3 paragraphs:

4           “(7) QUALIFIED FIRST-TIME HOMEBUYER DIS-  
 5 TRIBUTIONS.—For purposes of paragraph  
 6 (2)(D)(i)—

7           “(A) IN GENERAL.—The term ‘qualified  
 8 first-time homebuyer distribution’ means any  
 9 payment or distribution received by an individ-  
 10 ual to the extent such payment or distribution  
 11 is used by the individual before the close of the  
 12 60th day after the day on which such payment  
 13 or distribution is received to pay qualified ac-  
 14 quisition costs with respect to a principal resi-  
 15 dence of a first-time homebuyer who is such in-  
 16 dividual or the spouse, child (as defined in sec-  
 17 tion 151(c)(3)), or grandchild of such individ-  
 18 ual.

19           “(B) QUALIFIED ACQUISITION COSTS.—  
 20 For purposes of this paragraph, the term  
 21 ‘qualified acquisition costs’ means the costs of  
 22 acquiring, constructing, or reconstructing a res-  
 23 idence. Such term includes any usual or reason-  
 24 able settlement, financing, or other closing  
 25 costs.

1                   “(C) FIRST-TIME HOMEBUYER; OTHER  
2                   DEFINITIONS.—For purposes of this para-  
3                   graph—

4                   “(i) FIRST-TIME HOMEBUYER.—The  
5                   term ‘first-time homebuyer’ means any in-  
6                   dividual if—

7                   “(I) such individual (and if mar-  
8                   ried, such individual’s spouse) had no  
9                   present ownership interest in a prin-  
10                  cipal residence during the 3-year pe-  
11                  riod ending on the date of acquisition  
12                  of the principal residence to which  
13                  this paragraph applies, and

14                  “(II) subsection (h) or (k) of sec-  
15                  tion 1034 did not suspend the run-  
16                  ning of any period of time specified in  
17                  section 1034 with respect to such in-  
18                  dividual on the day before the date  
19                  the distribution is applied pursuant to  
20                  subparagraph (A).

21                  In the case of an individual described in  
22                  section 143(i)(1)(C) for any year, an own-  
23                  ership interest shall not include any inter-  
24                  est under a contract of deed described in  
25                  such section. An individual who loses an

1 ownership interest in a principal residence  
 2 incident to a divorce or legal separation is  
 3 deemed for purposes of this subparagraph  
 4 to have had no ownership interest in such  
 5 principal residence within the period re-  
 6 ferred to in subclause (II).

7 “(ii) PRINCIPAL RESIDENCE.—The  
 8 term ‘principal residence’ has the same  
 9 meaning as when used in section 1034.

10 “(iii) DATE OF ACQUISITION.—The  
 11 term ‘date of acquisition’ means the date—

12 “(I) on which a binding contract  
 13 to acquire the principal residence to  
 14 which subparagraph (A) applies is en-  
 15 tered into, or

16 “(II) on which construction or re-  
 17 construction of such a principal resi-  
 18 dence is commenced.

19 “(D) SPECIAL RULE WHERE DELAY IN AC-  
 20 QUISTION.—Any portion of any distribution  
 21 from any individual retirement plan which fails  
 22 to meet the requirements of subparagraph (A)  
 23 solely by reason of a delay or cancellation of the  
 24 purchase or construction of the residence may  
 25 be contributed to an individual retirement plan

as provided in section 408(d)(3)(A)(i) (determined by substituting ‘120 days’ for ‘60 days’ in such section), except that—

“(i) section 408(d)(3)(B) shall not be applied to such portion, and

“(ii) such portion shall not be taken into account in determining whether section 408(d)(3)(B) applies to any other amount.

“(8) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(D)(ii)—

“(A) IN GENERAL.—The term ‘qualified higher education expenses’ means tuition and fees required for the enrollment or attendance of—

“(i) the taxpayer,

“(ii) the taxpayer’s spouse,

“(iii) a dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151, or

“(iv) the taxpayer’s child (as defined in section 151(c)(3)) or grandchild, as an eligible student at an institution of higher education.

1           “(B) EXCEPTIONS.—The term ‘qualified  
2 higher education expenses’ does not include—

3           “(i) expenses with respect to any  
4 course or other education involving sports,  
5 games, or hobbies, unless such expenses—

6           “(I) are part of a degree pro-  
7 gram, or

8           “(II) are deductible under this  
9 chapter without regard to this section;

10          or

11          “(ii) any student activity fees, athletic  
12 fees, insurance expenses, or other expenses  
13 unrelated to a student’s academic course of  
14 instruction.

15          “(C) COORDINATION WITH SAVINGS BOND  
16 PROVISIONS.—The amount of qualified higher  
17 education expenses for any taxable year shall be  
18 reduced by any amount excludable from gross  
19 income under section 135.

20          “(D) ELIGIBLE STUDENT.—For purposes  
21 of subparagraph (A), the term ‘eligible student’  
22 means a student who—

23          “(i) meets the requirements of section  
24 484(a)(1) of the Higher Education Act of  
25 1965 (20 U.S.C. 1091(a)(1)), as in effect

1 on the date of the enactment of this sec-  
 2 tion, and

3 “(ii)(I) is carrying at least one-half  
 4 the normal full-time work load for the  
 5 course of study the student is pursuing, as  
 6 determined by the institution of higher  
 7 education, or

8 “(II) is enrolled in a course which en-  
 9 ables the student to improve the student’s  
 10 job skills or to acquire new job skills.

11 “(E) INSTITUTION OF HIGHER EDU-  
 12 CATION.—The term ‘institution of higher edu-  
 13 cation’ means an institution which—

14 “(i) is described in section 481 of the  
 15 Higher Education Act of 1965 (20 U.S.C.  
 16 1088), as in effect on the date of the en-  
 17 actment of this section, and

18 “(ii) is eligible to participate in pro-  
 19 grams under title IV of such Act.

20 “(9) QUALIFIED LONG-TERM CARE SERVICES.—  
 21 For purposes of paragraph (2)(B)—

22 “(A) IN GENERAL.—The term ‘qualified  
 23 long-term care services’ means necessary diag-  
 24 nostic, curing, mitigating, treating, preventive,  
 25 therapeutic, and rehabilitative services, and

1 maintenance and personal care services (wheth-  
 2 er performed in a residential or nonresidential  
 3 setting) which—

4 “(i) are required by an individual dur-  
 5 ing any period the individual is an inca-  
 6 pacitated individual (as defined in subpara-  
 7 graph (B)),

8 “(ii) have as their primary purpose—

9 “(I) the provision of needed as-  
 10 sistance with 1 or more activities of  
 11 daily living (as defined in subpara-  
 12 graph (C)), or

13 “(II) protection from threats to  
 14 health and safety due to severe cog-  
 15 nitive impairment, and

16 “(iii) are provided pursuant to a con-  
 17 tinuing plan of care prescribed by a li-  
 18 censed professional (as defined in subpara-  
 19 graph (D)).

20 “(B) INCAPACITATED INDIVIDUAL.—The  
 21 term ‘incapacitated individual’ means any indi-  
 22 vidual who—

23 “(i) is unable to perform, without sub-  
 24 stantial assistance from another individual  
 25 (including assistance involving cueing or

substantial supervision), at least 2 activities of daily living as defined in subparagraph (C), or

“(ii) has severe cognitive impairment as defined by the Secretary in consultation with the Secretary of Health and Human Services.

Such term shall not include any individual otherwise meeting the requirements of the preceding sentence unless, within the preceding 12-month period, a licensed professional has certified that such individual meets such requirements.

“(C) ACTIVITIES OF DAILY LIVING.—Each of the following is an activity of daily living:

“(i) Eating.

“(ii) Toileting.

“(iii) Transferring.

“(iv) Bathing.

“(v) Dressing.

“(D) LICENSED PROFESSIONAL.—The term ‘licensed professional’ means—

“(i) a physician or registered professional nurse, or



1                   “(ii) any other individual who meets  
 2                   such requirements as may be prescribed by  
 3                   the Secretary after consultation with the  
 4                   Secretary of Health and Human Services.

5                   “(E) CERTAIN SERVICES NOT IN-  
 6                   CLUDED.—The term ‘qualified long-term care  
 7                   services’ shall not include any services provided  
 8                   to an individual—

9                   “(i) by a relative (directly or through  
 10                  a partnership, corporation, or other entity)  
 11                  unless the relative is a licensed professional  
 12                  with respect to such services, or

13                  “(ii) by a corporation or partnership  
 14                  which is related (within the meaning of  
 15                  section 267(b) or 707(b)) to the individual.

16                  For purposes of this subparagraph, the term  
 17                  ‘relative’ means an individual bearing a rela-  
 18                  tionship to the individual which is described in  
 19                  paragraphs (1) through (8) of section 152(a).”

20                  (d) DISTRIBUTIONS FOR CERTAIN UNEMPLOYED IN-  
 21                  DIVIDUALS.—Paragraph (2) of section 72(t) is amended  
 22                  by adding at the end the following new subparagraph:

23                         “(E) DISTRIBUTIONS TO UNEMPLOYED IN-  
 24                         DIVIDUALS.—A distribution from an individual

retirement plan to an individual after separation from employment, if—

“(i) such individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of such separation, and

“(ii) such distributions are made during any taxable year during which such unemployment compensation is paid or the succeeding taxable year.”

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after December 31, 1995.

**SEC. 1322. CONTRIBUTIONS MUST BE HELD AT LEAST 5 YEARS IN CERTAIN CASES.**

(a) IN GENERAL.—Section 72(t), as amended by this Act, is amended by adding at the end the following new paragraph:

“(10) CERTAIN CONTRIBUTIONS MUST BE HELD 5 YEARS.—

“(A) IN GENERAL.—Paragraph (2)(A)(i) shall not apply to any amount distributed out of an individual retirement plan (other than a special individual retirement account) which is

1 allocable to contributions made to the plan dur-  
2 ing the 5-year period ending on the date of  
3 such distribution (and earnings on such con-  
4 tributions).

5 “(B) ORDERING RULE.—For purposes of  
6 this paragraph—

7 “(i) FIRST-IN, FIRST-OUT RULE.—  
8 Distributions shall be treated as having  
9 been made—

10 “(I) first from the earliest con-  
11 tribution (and earnings allocable  
12 thereto) remaining in the account at  
13 the time of the distribution, and

14 “(II) then from other contribu-  
15 tions (and earnings allocable thereto)  
16 in the order in which made.

17 “(ii) ALLOCATION OF EARNINGS.—  
18 Earnings shall be allocated to contribu-  
19 tions in such manner as the Secretary may  
20 prescribe.

21 “(iii) AGGREGATIONS OF CONTRIBU-  
22 TIONS.—Except as provided by the Sec-  
23 retary, for purposes of this subpara-  
24 graph—

1 “(I) all contributions made dur-  
 2 ing the same taxable year may be  
 3 treated as 1 contribution, and

4 “(II) all contributions made be-  
 5 fore the first day of the 5-year period  
 6 ending on the day before any distribu-  
 7 tion may be treated as 1 contribution.

8 “(C) SPECIAL RULE FOR ROLLOVERS.—

9 “(i) PENSION PLANS.—Subparagraph  
 10 (A) shall not apply to distributions out of  
 11 an individual retirement plan which are al-  
 12 locable to rollover contributions to which  
 13 section 402(c), 403(a)(4), or 403(b)(8) ap-  
 14 plied.

15 “(ii) CONTRIBUTION PERIOD.—For  
 16 purposes of subparagraph (A), amounts  
 17 shall be treated as having been held by a  
 18 plan during any period such contributions  
 19 were held (or are treated as held under  
 20 this clause) by any individual retirement  
 21 plan from which transferred.

22 “(D) SPECIAL ACCOUNTS.—For rules ap-  
 23 plicable to special individual retirement ac-  
 24 counts under section 408A, see paragraph (8).”

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to contributions (and earnings allo-  
 3 cable thereto) which are made after December 31, 1995.

4 **SEC. 1323. INVESTMENTS IN QUALIFIED STATE PREPAID**  
 5 **TUITION PROGRAMS.**

6 (a) IN GENERAL.—Section 408, as amended by sec-  
 7 tion 1101, is amended by redesignating subsection (q) as  
 8 subsection (r) and by inserting after subsection (p) the  
 9 following new subsection:

10 “(q) SPECIAL RULES FOR QUALIFIED STATE PRE-  
 11 PAID TUITION PROGRAM INSTRUMENTS.—

12 “(1) IN GENERAL.—In the case of a qualified  
 13 State prepaid tuition program instrument to which  
 14 this subsection applies—

15 “(A) the use of all or part of the assets of  
 16 an individual retirement plan to purchase such  
 17 an instrument shall be treated for purposes of  
 18 this section as for the exclusive benefit of the  
 19 individual for whom the plan was established or  
 20 the individual’s beneficiaries, and

21 “(B) to the extent such instrument is con-  
 22 verted into tuition and fees as provided in para-  
 23 graph (3)(B)(i), such individual (or such bene-  
 24 ficiaries) shall be treated—

1 “(i) for purposes of subsection (d) as  
 2 having received a distribution in an  
 3 amount equal to such tuition and fees (as  
 4 of the time of the conversion), and

5 “(ii) for purposes of section  
 6 72(t)(2)(D)(ii), as having incurred quali-  
 7 fied higher education expenses to the ex-  
 8 tent such tuition and fees otherwise con-  
 9 stitute such expenses.

10 “(2) INSTRUMENTS TO WHICH SUBSECTION AP-  
 11 PLIES.—To the extent provided by the Secretary,  
 12 this subsection shall apply to any qualified State  
 13 prepaid tuition program instrument if—

14 “(A) the instrument is purchased by the  
 15 individual retirement plan directly from the  
 16 State or an instrumentality thereof, and

17 “(B) the beneficiary designated under the  
 18 instrument is the taxpayer, the taxpayer’s  
 19 spouse, a dependent of the taxpayer with re-  
 20 spect to whom the taxpayer is allowed a deduc-  
 21 tion under section 151, or the taxpayer’s child  
 22 (as defined in section 151(c)(3)) or grandchild.

23 “(3) QUALIFIED STATE PREPAID TUITION PRO-  
 24 GRAM INSTRUMENT.—For purposes of this sub-

1 section, the term ‘qualified State prepaid tuition pro-  
 2 gram instrument’ means an instrument which—

3 “(A) is issued under a program established  
 4 and maintained by a State, and

5 “(B) which may only be—

6 “(i) converted into a percentage (de-  
 7 termined as of the time of purchase) of  
 8 tuition and fees which would constitute  
 9 qualified higher education expenses (within  
 10 the meaning of section 72(t)(8)) if the ben-  
 11 eficiary designated under the instrument  
 12 enrolls in or attends an institution of high-  
 13 er education specified in the instrument as  
 14 an eligible student, or

15 “(ii) redeemed for an amount not less  
 16 than the purchase price (less any reason-  
 17 able administrative fees) if the instrument  
 18 is not converted as provided in clause (i).

19 “(4) DEFINITIONS.—For purposes of this sub-  
 20 section, the terms ‘institution of higher education’  
 21 and ‘eligible student’ have the meanings given such  
 22 terms by section 72(t)(8).”

23 (b) EXEMPTION FROM PROHIBITED TRANS-  
 24 ACTIONS.—Section 4975(d) is amended by striking “or”  
 25 at the end of paragraph (14), by striking the period at

1 the end of paragraph (15) and inserting “; or”, and by  
 2 inserting after paragraph (15) the following new para-  
 3 graph:

4 “(16) any purchase of a qualified State prepaid  
 5 tuition program instrument to which section 408(q)  
 6 applies.”

7 (c) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to taxable years beginning after  
 9 December 31, 1995.

### 10 **CHAPTER 3—TERMINATION OF CERTAIN** 11 **PROVISIONS**

#### 12 **SEC. 1331. TERMINATION OF CERTAIN PROVISIONS.**

13 (a) TERMINATION OF INFLATION ADJUSTMENT FOR  
 14 IRA LIMITATIONS.—The dollar amounts applicable under  
 15 section 219 of the Internal Revenue Code of 1986 shall  
 16 be determined without regard to subsection (h) of such  
 17 section in the case of taxable years beginning after Decem-  
 18 ber 31, 2000.

19 (b) TERMINATION OF CONTRIBUTIONS TO SPECIAL  
 20 INDIVIDUAL RETIREMENT ACCOUNTS.—No contribution  
 21 may be made after December 31, 2000, to any special in-  
 22 dividual retirement account (within the meaning of section  
 23 408A of such Code).

24 (c) TERMINATION OF TRANSFERS TO SPECIAL INDIV-  
 25 IDUAL RETIREMENT ACCOUNTS FROM REGULAR INDIV-



1 VIDUAL RETIREMENT ACCOUNTS.—For purposes of sec-  
 2 tion 408A of such Code, the term “qualified transfer”  
 3 shall not include any transfer after December 31, 2000,  
 4 to a special individual retirement account from any ac-  
 5 count other than a special individual retirement account.

6 (d) APPLICATION OF EARLY WITHDRAWAL TAX.—  
 7 The amendments made by the following provisions shall  
 8 not apply to any distribution after December 31, 2000:

9 (1) Section 1311(b) (relating to exception for  
 10 distributions from special individual retirement ac-  
 11 counts allocable to contributions held at least 5  
 12 years).

13 (2) Section 1321 (relating to distributions from  
 14 IRAs may be used without additional tax to pur-  
 15 chase first homes, to pay higher education or finan-  
 16 cially devastating medical expenses, or by the unem-  
 17 ployed).

18 (3) Section 1322 (relating to exception for dis-  
 19 tributions allocable to contributions held at least 5  
 20 years).

21 (e) TERMINATION OF INCREASES IN CERTAIN LIMI-  
 22 TATIONS.—The amendments made by the following provi-  
 23 sions shall not apply to any taxable year beginning after  
 24 December 31, 2000:

1 (1) Section 1301 (relating to increase in income  
2 limitations for individual retirement plans).

3 (2) Section 1303 (relating to coordination of  
4 IRA deduction limit with elective deferral limit).

## 5 **Subtitle C—Other Expansions of** 6 **Pension Portability**

### 7 **SEC. 1401. ALTERNATIVE NONDISCRIMINATION RULES FOR** 8 **CERTAIN PLANS THAT PROVIDE FOR EARLY** 9 **PARTICIPATION.**

10 (a) CASH OR DEFERRED ARRANGEMENTS.—Para-  
11 graph (3) of section 401(k) (relating to application of par-  
12 ticipation and discrimination standards), as amended by  
13 section 1103(d), is amended by adding at the end the fol-  
14 lowing new subparagraph:

15 “(F) SPECIAL RULE FOR EARLY PARTICI-  
16 PATION.—If an employer elects to apply section  
17 410(b)(4)(B) in determining whether a cash or  
18 deferred arrangement meets the requirements  
19 of subparagraph (A)(i), the employer may, in  
20 determining whether the arrangement meets the  
21 requirements of subparagraph (A)(ii), exclude  
22 from consideration all eligible employees (other  
23 than highly compensated employees) who have  
24 not met the minimum age and service require-  
25 ments of section 410(a)(1)(A).”

1 (b) MATCHING CONTRIBUTIONS.—Paragraph (5) of  
 2 section 401(m) (relating to employees taken into consider-  
 3 ation) is amended by adding at the end the following new  
 4 subparagraph:

5 “(C) SPECIAL RULE FOR EARLY PARTICI-  
 6 PATION.—If an employer elects to apply section  
 7 410(b)(4)(B) in determining whether a plan  
 8 meets the requirements of section 410(b), the  
 9 employer may, in determining whether the plan  
 10 meets the requirements of paragraph (2), ex-  
 11 clude from consideration all eligible employees  
 12 (other than highly compensated employees) who  
 13 have not met the minimum age and service re-  
 14 quirements of section 410(a)(1)(A).”

15 (c) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply to plan years beginning after De-  
 17 cember 31, 1996.

18 **SEC. 1402. TREATMENT OF CERTAIN VETERANS’ REEM-**  
 19 **PLOYMENT RIGHTS.**

20 (a) IN GENERAL.—Section 414 is amended by adding  
 21 at the end the following new subsection:

22 “(u) SPECIAL RULES RELATING TO VETERANS’ RE-  
 23 EMPLOYMENT RIGHTS UNDER USSERA.—

24 “(1) TREATMENT OF CERTAIN CONTRIBUTIONS  
 25 MADE PURSUANT TO VETERANS’ REEMPLOYMENT

1       RIGHTS UNDER USERRA.—If any contribution is  
2       made by an employer or an employee under an indi-  
3       vidual account plan with respect to an employee, or  
4       by an employee to a defined benefit plan that pro-  
5       vides for employee contributions, and such contribu-  
6       tion is required by reason of such employee’s rights  
7       under chapter 43 of title 38, United States Code, re-  
8       sulting from qualified military service, then—

9               “(A) such contribution shall not be subject  
10              to any otherwise applicable limitation contained  
11              in section 402(g), 402(h), 403(b), 404(a),  
12              404(h), 408, 415, or 457, and shall not be  
13              taken into account in applying such limitations  
14              to other contributions or benefits under such  
15              plan or any other plan, with respect to the year  
16              in which the contribution is made,

17             “(B) such contribution shall be subject to  
18              the limitations referred to in subparagraph (A)  
19              with respect to the year to which the contribu-  
20              tion relates (in accordance with rules prescribed  
21              by the Secretary), and

22             “(C) such plan shall not be treated as fail-  
23              ing to meet the requirements of section  
24              401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11),  
25              401(m), 403(b)(12), 408(k)(3), 408(k)(6),

1           408(p), 410(b), or 416 by reason of the making  
2           of (or the right to make) such contribution.

3           For purposes of the preceding sentence, any elective  
4           deferral or employee contribution made under para-  
5           graph (2) shall be treated as required by reason of  
6           the employee's rights under such chapter 43.

7           “(2) REEMPLOYMENT RIGHTS UNDER USERRA  
8           WITH RESPECT TO ELECTIVE DEFERRALS.—

9           “(A) IN GENERAL.—For purposes of this  
10          subchapter and section 457, if an employee is  
11          entitled to the benefits of chapter 43 of title 38,  
12          United States Code, with respect to any plan  
13          which provides for elective deferrals, the em-  
14          ployer sponsoring the plan shall be treated as  
15          meeting the requirements of such chapter 43  
16          with respect to such elective deferrals only if  
17          such employer—

18          “(i) permits such employee to make  
19          additional elective deferrals under such  
20          plan (in the amount determined under sub-  
21          paragraph (B) or such lesser amount as is  
22          elected by the employee) during the period  
23          which begins on the date of the reemploy-  
24          ment of such employee with such employer  
25          and has the same length as the lesser of—

1                   “(I) the product of 3 and the pe-  
2                   riod of qualified military service which  
3                   resulted in such rights, and

4                   “(II) 5 years, and

5                   “(ii) makes a matching contribution  
6                   with respect to any additional elective de-  
7                   ferral made pursuant to clause (i) which  
8                   would have been required had such defer-  
9                   ral actually been made during the period of  
10                  such qualified military service.

11                  “(B) AMOUNT OF MAKEUP REQUIRED.—

12                  The amount determined under this subpara-  
13                  graph with respect to any plan is the maximum  
14                  amount of the elective deferrals that the indi-  
15                  vidual would have been permitted to make  
16                  under the plan in accordance with the limita-  
17                  tions referred to in paragraph (1)(A) during the  
18                  period of qualified military service if the indi-  
19                  vidual had continued to be employed by the em-  
20                  ployer during such period and received com-  
21                  pensation as determined under paragraph (7).  
22                  Proper adjustment shall be made to the amount  
23                  determined under the preceding sentence for  
24                  any elective deferrals actually made during the  
25                  period of such qualified military service.

“(C) ELECTIVE DEFERRAL.—For purposes of this paragraph, the term ‘elective deferral’ has the meaning given such term by section 402(g)(3); except that such term shall include any deferral of compensation under an eligible deferred compensation plan (as defined in section 457(b)).

“(D) AFTER-TAX EMPLOYEE CONTRIBUTIONS.—References in subparagraphs (A) and (B) to elective deferrals shall be treated as including references to employee contributions.

“(3) CERTAIN RETROACTIVE ADJUSTMENTS NOT REQUIRED.—For purposes of this subchapter and subchapter E, no provision of chapter 43 of title 38, United States Code, shall be construed as requiring—

“(A) any crediting of earnings to an employee with respect to any contribution before such contribution is actually made, or

“(B) any allocation of any forfeiture with respect to the period of qualified military service.

“(4) LOAN REPAYMENT SUSPENSIONS PERMITTED.—If any plan suspends the obligation to repay any loan made to an employee from such plan

1       for any part of any period during which such em-  
 2       ployee is performing service in the uniformed serv-  
 3       ices (as defined in chapter 43 of title 38, United  
 4       States Code), whether or not qualified military serv-  
 5       ice, such suspension shall not be taken into account  
 6       for purposes of section 72(p) or 401(a).

7               “(5) QUALIFIED MILITARY SERVICE.—For pur-  
 8       poses of this subsection, the term ‘qualified military  
 9       service’ means any service in the uniformed services  
 10      (as defined in chapter 43 of title 38, United States  
 11      Code) by any individual if such individual is entitled  
 12      to reemployment rights under such chapter with re-  
 13      spect to such service.

14              “(6) INDIVIDUAL ACCOUNT PLAN.—For pur-  
 15      poses of this subsection, the term ‘individual account  
 16      plan’ means any defined contribution plan (including  
 17      any tax-sheltered annuity plan under section 403(b),  
 18      any simplified employee pension under section  
 19      408(k), and any NEST under section 408(p)) and  
 20      any eligible deferred compensation plan (as defined  
 21      in section 457(b)).

22              “(7) COMPENSATION.—For purposes of sections  
 23      403(b)(3), 415(c)(3), and 457(e)(5), an employee  
 24      who is in qualified military service shall be treated



1 as receiving compensation from the employer during  
2 such period of qualified military service equal to—

3 “(A) the compensation the employee would  
4 have received during such period if the em-  
5 ployee were not in qualified military service, de-  
6 termined based on the rate of pay the employee  
7 would have received from the employer but for  
8 absence during the period of qualified military  
9 service, or

10 “(B) if the compensation the employee  
11 would have received during such period was not  
12 reasonably certain, the employee’s average com-  
13 pensation from the employer during the 12-  
14 month period immediately preceding the quali-  
15 fied military service (or, if shorter, the period of  
16 employment immediately preceding the qualified  
17 military service).

18 “(8) USERRA REQUIREMENTS FOR QUALIFIED  
19 RETIREMENT PLANS.—For purposes of this sub-  
20 chapter and section 457, an employer sponsoring a  
21 retirement plan shall be treated as meeting the re-  
22 quirements of chapter 43 of title 38, United States  
23 Code, only if each of the following requirements is  
24 met:

1           “(A) An individual reemployed under such  
2 chapter is treated with respect to such plan as  
3 not having incurred a break in service with the  
4 employer maintaining the plan by reason of  
5 such individual’s period of qualified military  
6 service.

7           “(B) Each period of qualified military  
8 service served by an individual is, upon reem-  
9 ployment under such chapter, deemed with re-  
10 spect to such plan to constitute service with the  
11 employer maintaining the plan for the purpose  
12 of determining the nonforfeitability of the indi-  
13 vidual’s accrued benefits under such plan and  
14 for the purpose of determining the accrual of  
15 benefits under such plan.

16           “(C) An individual reemployed under such  
17 chapter is entitled to accrued benefits that are  
18 contingent on the making of, or derived from,  
19 employee contributions or elective deferrals only  
20 to the extent the individual makes payment to  
21 the plan with respect to such contributions or  
22 deferrals. No such payment may exceed the  
23 amount the individual would have been per-  
24 mitted or required to contribute had the indi-  
25 vidual remained continuously employed by the

1 employer throughout the period of qualified  
 2 military service. Any payment to such plan shall  
 3 be made during the period beginning with the  
 4 date of reemployment and whose duration is 3  
 5 times the period of the qualified military service  
 6 (but not greater than 5 years).

7 “(9) PLANS NOT SUBJECT TO TITLE 38.—This  
 8 subsection shall not apply to any retirement plan to  
 9 which chapter 43 of title 38, United States Code,  
 10 does not apply.

11 “(10) REFERENCES.—For purposes of this sec-  
 12 tion, any reference to chapter 43 of title 38, United  
 13 States Code, shall be treated as a reference to such  
 14 chapter as in effect on December 12, 1994 (without  
 15 regard to any subsequent amendment).”

16 (b) COORDINATION WITH PROHIBITED TRANS-  
 17 ACTION RULES.—Section 4975(d) is amended by adding  
 18 at the end the following new sentence: “A loan made by  
 19 a plan shall not fail to meet the requirements of paragraph  
 20 (1) by reason of a loan repayment suspension described  
 21 under section 414(u)(4).”

22 (c) EFFECTIVE DATE.—The amendments made by  
 23 this section shall be effective as of December 12, 1994.

1 **SEC. 1403. ELIMINATION OF SPECIAL VESTING RULE FOR**  
2 **MULTIEMPLOYER PLANS.**

3 (a) IN GENERAL.—Paragraph (2) of section 411(a)  
4 (relating to minimum vesting standards) is amended—

5 (1) by striking “subparagraph (A), (B), or (C)”

6 and inserting “subparagraph (A) or (B)”; and

7 (2) by striking subparagraph (C).

8 (b) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to plan years beginning on or after  
10 the earlier of—

11 (1) the later of—

12 (A) January 1, 1997, or

13 (B) the date on which the last of the col-  
14 lective bargaining agreements pursuant to  
15 which the plan is maintained terminates (deter-  
16 mined without regard to any extension thereof  
17 after the date of the enactment of this Act), or

18 (2) January 1, 1999.

19 Such amendments shall not apply to any individual who  
20 does not have more than 1 hour of service under the plan  
21 on or after the 1st day of the 1st plan year to which such  
22 amendments apply.

## Subtitle D—Conforming Amendments

### SEC. 1501. CONFORMING AMENDMENT RELATING TO MISSING PARTICIPANTS.

Section 401(a)(34) is amended by striking “title IV” and inserting “section 4050”.

### SEC. 1502. CONFORMING AMENDMENTS RELATING TO ERISA ENFORCEMENT.

(a) SPECIAL RULE FOR CERTAIN JUDGMENTS AND SETTLEMENTS.—Section 401(a)(13) is amended by adding at the end the following new subparagraphs:

“(C) SPECIAL RULE FOR CERTAIN JUDGMENTS AND SETTLEMENTS.—Subparagraph (A) shall not apply to any offset of a participant’s accrued benefit in a plan against an amount that the participant is ordered or required to pay to the plan if—

“(i) the order or requirement to pay arises—

“(I) under a judgment of conviction for a crime involving such plan,

“(II) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or al-

1           leged violation) of part 4 of subtitle B  
2           of title I of the Employee Retirement  
3           Income Security Act of 1974, or

4           “(III) pursuant to a settlement  
5           agreement between the Secretary of  
6           Labor and the participant, or a settle-  
7           ment agreement between the Pension  
8           Benefit Guaranty Corporation and the  
9           participant, in connection with a viola-  
10          tion (or alleged violation) of part 4 of  
11          subtitle B of title I of such Act,

12          “(ii) the judgment, order, decree, or  
13          settlement agreement expressly provides  
14          for the offset of all or part of the amount  
15          ordered or required to be paid to the plan  
16          against the participant’s accrued benefit in  
17          the plan, and

18          “(iii) if the participant has a spouse  
19          at the time at which the offset is to be  
20          made—

21                  “(I) such spouse has consented  
22                  in writing to such offset and such con-  
23                  sent is witnessed by a notary public or  
24                  representative of the plan,

1 “(II) such spouse is ordered or  
 2 required to pay in such judgment,  
 3 order, decree, or settlement an  
 4 amount to the plan in connection with  
 5 a violation of part 4 of this title, or

6 “(III) in such judgment, order,  
 7 decree, or settlement, such spouse re-  
 8 tains the right to receive the value of  
 9 the survivor annuity under a qualified  
 10 joint and survivor annuity provided  
 11 pursuant to paragraph (11)(A)(i) and  
 12 under a qualified preretirement survi-  
 13 vor annuity provided pursuant to  
 14 paragraph 11(A)(ii), determined in  
 15 accordance with subparagraph (D).

16 “(D) DETERMINATION OF VALUE OF SUR-  
 17 VIVOR ANNUITY IN CONNECTION WITH OFF-  
 18 SET.—The value of the survivor annuity de-  
 19 scribed in subparagraph (C)(iii)(III) shall be  
 20 determined as if—

21 “(i) the participant terminated em-  
 22 ployment on the date of the offset,

23 “(ii) there was no offset,

24 “(iii) the plan permitted retirement  
 25 only on or after normal retirement age,

1 “(iv) the plan provided only the mini-  
2 mum-required qualified joint and survivor  
3 annuity, and

4 “(v) the amount of the qualified pre-  
5 retirement survivor annuity under the plan  
6 is equal to the amount of the survivor an-  
7 nuity payable under the minimum-required  
8 qualified joint and survivor annuity.

9 For purposes of this subparagraph, the term  
10 ‘minimum-required qualified joint and survivor  
11 annuity’ means the qualified joint and survivor  
12 annuity which is the actuarial equivalent of a  
13 single annuity for the life of the participant and  
14 under which the survivor annuity is 50 percent  
15 of the amount of the annuity which is payable  
16 during the joint lives of the participant and the  
17 spouse.

18 “(E) WAIVER OF CERTAIN DISTRIBUTION  
19 REQUIREMENTS.—With respect to the require-  
20 ments of subsections (a) and (k) of section 401,  
21 section 403(b), and section 409(d), a plan shall  
22 not be treated as failing to meet such require-  
23 ments solely by reason of an offset under sub-  
24 paragraph (C).”



1       (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall apply to judgments, orders, and de-  
3 crees issued, and settlement agreements entered into, on  
4 or after the date of enactment of this Act.

